

CONSOLIDATED SUMMARY JUDGMENT EXHIBITS

EXHIBIT 8

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

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4
5 PAUL IACOVACCI,

6
7 Plaintiff,

8
9 -against-

Case No.

1:18-cv-08048

BREVET HOLDINGS, LLC, et al.,

Defendants.

----- x

11
12 November 1, 2021

10:04 a.m.

13
14
15 CONTINUED VIRTUAL DEPOSITION of the
16 Defendant/30(b)(6) witness, DOUGLAS
17 MONTICCIOLO, taken pursuant to Stipulation,
18 held before Fran Insley, a Notary Public of the
19 States of New York and New Jersey.
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A P P E A R A N C E S:

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BY: LOUIS SOLOMON, ESQ.

COLIN UNDERWOOD, ESQ.

ADINA LEVINE, ESQ.

SCOTT WEISS, ESQ.

MONICA YANG, ESQ.

ALSO PRESENT:

MARCELO RIVERA, Videographer

MEI-LI DA SILVA VINT

DAVID SPINLEY, Brevet Capital

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WITNESS EXAMINATION BY PAGE

4

DOUGLAS MONTICCILO MR. CYRULNIK 464

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6

-----E X H I B I T S-----

7

MONTICCILO DESCRIPTION PAGE

8

Exhibit 11 9/25/18 Affidavit 544

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Exhibit 12 1/2018 Affidavit 544

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Exhibit 13 Limited Liability Agreement 595

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Exhibit 14 BREVET013260 --

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Exhibit 15 BREVET205010 632

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Exhibit 16 Page 8 of Exhibit 11 642

14

(EXHIBITS TO BE PRODUCED.)

15

----- PREVIOUSLY MARKED EXHIBITS-----

16

Exhibit 10 30(b)(6) Notice 465

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Exhibit 3 Termination Letter 590

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the respective
parties herein, that filing, sealing and
certification, and the same are, hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections except as to the form of
the question, shall be reserved to the time of
the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed and
sworn to by an officer authorized to administer
an oath, with the same force and effect as if
signed and sworn to before the Court.

XXXXXX

1 Monticciolo

2 THE VIDEOGRAPHER: Good morning. We
3 are going on the record at 10:04 a.m. on
4 November 1st, 2021.

5 This deposition is being taken
6 remotely of Mr. Douglas Monticciolo in the
7 matter of Iacovacci versus Brevet Holdings
8 LLC.

9 My name is Marcelo Rivera from
10 Veritext Legal Solutions. I am the
11 videographer. The court reporter is Fran
12 Insley in association with Veritext Legal
13 Solutions. I'm am not related to any
14 party in this action nor am I financially
15 interested in the outcome.

16 Counsel and all present remotely
17 will now state their appearance and
18 affiliations for the record. If there are
19 any objections to proceeding, please state
20 them at the time of your appearance
21 beginning with noticing attorney.

22 MR. CYRULNIK: This is Jason
23 Cyrulnik from Cyrulnik Fattaruso on behalf
24 of the plaintiff.

25 MR. SOLOMON: Lou Solomon for the

1 Monticciolo

2 defendants and the witness. And just to
3 be clear, I think it is fine to start with
4 page 452, but as I understand it, Jason,
5 we are in the 30(b)(6) section of this
6 deposition?

7 MR. CYRULNIK: That's right.

8 MR. SOLOMON: And with me by the way
9 in the room are Colin Underwood and Monica
10 Yang along with the witness. That's all.

11 MR. CYRULNIK: Okay.

12 THE VIDEOGRAPHER: Will the court
13 reporter please swear in the witness.

14 D O U G L A S M O N T I C C I O L O,
15 the Witness herein, having first been duly
16 sworn by the Notary Public, was examined and
17 testified as follows:

18 MR. CYRULNIK: Before I start, Lou,
19 just for my benefit, I see there are two
20 corporate representatives listening in to
21 the deposition on behalf of the
22 defendants?

23 MR. SOLOMON: I don't know who is
24 listening in. If what you mean is Ms. da
25 Silva Vint, she is counsel for the

1 Monticciolo

2 company. We've also identified her as
3 corporate representative for some of the
4 other topics, but I don't understand what
5 you mean.

6 MR. CYRULNIK: I'm referring to the
7 fact that there are two Brevet
8 representatives.

9 MR. SOLOMON: David Spinley is with
10 Brevet also.

11 MR. CYRULNIK: My understanding is
12 that there was one corporate
13 representative who could attend
14 depositions.

15 I don't know if you had a different
16 understanding, but if you do, I'm happy to
17 sort that out during a break rather than
18 take time now. Do you have a view on
19 that, Lou?

20 MR. SOLOMON: Corporate
21 representatives? I'm not sure what you
22 are talking about. Ms. da Silva Vint --

23 THE COURT REPORTER: You are talking
24 at the same time, sorry.

25 MR. CYRULNIK: What I'm referring to

1 Monticciolo

2 is, Lou, is that there are two
3 representatives of the corporation, as I
4 understand it, who are not being deposed
5 right now who are listening in.

6 If I am misunderstanding that state
7 of play, let me know, but I heard two
8 people. I see two people on the list,
9 David Spinley and Mei-Li da Silva Vint,
10 who are both there presumably as
11 representatives of the company attending
12 the deposition.

13 MR. SOLOMON: Mr. Spinley is not
14 going to be deposed. He is acting in the
15 capacity as a paralegal and what I want to
16 say about him: Ms. da Silva Vint is here
17 as counsel and then when you have
18 questions later on in the day, we are
19 going to be starting her 30(b)(6) and she
20 will then be the corporate representative.
21 She is not attending this deposition as a
22 corporate representative.

23 MR. CYRULNIK: I think you're
24 misunderstanding me, Lou. There are two
25 people that are attending from Brevet

1 Monticciolo

2 apart from the witness. Am I wrong or
3 right?

4 MR. SOLOMON: I'm not familiar with
5 the rule that precludes corporate
6 employees from attending this deposition.

7 MR. CYRULNIK: This is why I asked
8 you the question. Is it your
9 understanding that you are permitted to
10 have more than one representative of the
11 company, of the corporation attending a
12 deposition that they are not being deposed
13 in?

14 MR. SOLOMON: I don't think they are
15 representatives of the company. One is
16 counsel for the company and one is a
17 paralegal.

18 MR. CYRULNIK: When you say they are
19 not representatives of the company, are
20 they simply here for the sport, to watch a
21 deposition? Why are they listening in to
22 a deposition if they are not here on
23 behalf of the company?

24 MR. SOLOMON: They are certainly
25 here on behalf of the company. You said

1 Monticciolo

2 that they were representatives of the
3 company. As you would explain,
4 Mr. Monticciolo is here as a corporate
5 representative. I don't want to get those
6 confused, but I don't think there is
7 anything wrong with them attending the
8 deposition. If you do, then you should
9 assert an objection and we can then figure
10 out what we want to do. I don't think
11 there is anything wrong with counsel
12 attending deposition.

13 MR. CYRULNIK: Number one, I don't
14 want to get caught up in semantics about
15 whether they are here on behalf of the
16 company or representing the company. I'm
17 not quite sure what distinction you are
18 drawing. Being here as a representative
19 of the company, it has nothing to do with
20 the fact that they are or are not
21 designated to be testifying in response to
22 a 30(b)(6) deposition notice if that is
23 what you had in mind.

24 Again, notwithstanding all of that,
25 it sounds to me like your position is that

1 Monticciolo

2 more than one, and it sounds like an
3 unlimited number of representatives of the
4 company, employees of the company,
5 whatever term you want to use, are
6 permitted to attend depositions in this
7 matter. If that is your position, as I
8 said, we are happy to take it under
9 advisement and deal with it at a break if
10 we have a contrary position.

11 It was my understanding and it's
12 been the practice to date to my knowledge
13 that one representative or employee of the
14 company attended the deposition apart from
15 the deponent themselves. So that's why I
16 asked. So did I get your position
17 correct?

18 MR. SOLOMON: No, no, you didn't get
19 my position correct and I'm not going to
20 make any big speeches about it.

21 You asked questions of parties
22 before in their representative capacity
23 and people have been attending those
24 depositions who have been and I heard no
25 objection from you. I am not aware of an

1 Monticciolo

2 objection that is a valid one, that
3 counsel for the company can't attend a
4 deposition and that a paralegal in-house
5 at the company can't attend a deposition.

6 So if you have questions for this
7 witness in this 30(b)(6) capacity, I think
8 you should ask them. If you want to then
9 raise an objection, you should then raise
10 an objection.

11 MR. CYRULNIK: The irony of you
12 saying you are not going to give speeches
13 and then engaging in a 60 second speech
14 that didn't address my question is not
15 lost on anybody attending.

16 We will address this at the break if
17 there is something to address, but it
18 sounds like for the record, we have two
19 people here that are not being deposed,
20 apart from Mr. Monticciolo, who are not
21 being deposed who are associated with
22 Brevet apart from their outside counsel at
23 Reed Smith and they're attending the
24 deposition and to the extent there are any
25 issues with that, we will raise it

1 Monticciolo

2 separately with Mr. Solomon because, at
3 least as I understood his statement on the
4 record, he believes that that is
5 consistent with the rules.

6 EXAMINATION BY MR. CYRULNIK:

7 Q. Good morning, Mr. Monticciolo.

8 A. Good morning.

9 Q. The purpose of today's deposition as
10 you know is to continue the 30(b)(6) deposition
11 that we started with you on October 7, 2021.

12 Do you recall you have been
13 designated to testify on Topics 1 through 5 and
14 Topic 26 of the 30(b)(6) notice that we had
15 served on the company?

16 A. Yes.

17 Q. That 30(b)(6) notice for your
18 reference is going to be in your Exhibit Share.
19 We introduced it at the last deposition. The
20 Exhibit Share folder that we will be using
21 today has a new date on it, so there will be
22 two Doug Monticciolo folders. One has the
23 11/1/2021 title. That is the one we will be
24 using and you will see in that folder is an
25 Exhibit 10 which was previously marked at your

1 Monticciolo

2 first deposition, which is the 30(b)(6) notice
3 that I just referenced.

4 We don't need to go to it right now.
5 I just wanted to orient you both to the Exhibit
6 Share setup and to the fact that to the extent
7 you or I deem it useful, that deposition
8 notice, 30(b)(6) deposition notice, listing out
9 the topics can be found in the folder that you
10 should be using today. Okay?

11 MR. SOLOMON: I think we actually
12 would like to take a look at it although
13 if you're clear with your questions, what
14 number you're up to or what number you are
15 on I think that would be helpful, but we
16 are not seeing anything. It just says --
17 it says it's empty. So I've ask -- got
18 it.

19 MR. CYRULNIK: Are you telling me
20 that your marked exhibits folder for
21 deposition of Douglas Monticciolo
22 11/1/2021 is empty?

23 MR. SOLOMON: No, I'm saying that
24 the screen said it was empty. I think we
25 have the 30(b)(6) notice on the screen now

1 Monticciolo

2 if you want us to look at that.

3 MR. CYRULNIK: I don't, Lou. I'm
4 deposing Doug. If you have a problem with
5 the logistics --

6 MR. SOLOMON: That's why I asked it.

7 MR. CYRULNIK: But the problem has
8 been resolved. You are now seeing
9 Exhibit 10 in the marked exhibits folder
10 for today's deposition?

11 MR. SOLOMON: Yes.

12 MR. CYRULNIK: Okay, great.

13 Q. Mr. Monticciolo, did you do anything
14 to prepare for today's deposition apart from
15 what you did to prepare for the October 7,
16 30(b)(6) portion of the deposition?

17 A. I don't recall exactly what I said
18 on the prior, but we met with counsel, reviewed
19 the topics with the relevant documents. I
20 spoke to people inside the firm to get some
21 additional information.

22 Q. So in between the October 7th date
23 and today's date of November 1st, you spoke to
24 people in the company and to outside counsel to
25 prepare for the 30(b)(6) portion of the

1 Monticciolo

2 deposition; is that correct?

3 A. Correct.

4 Q. Let's start with meetings with
5 counsel. How many times did you meet with
6 counsel to prepare for the deposition today?

7 A. Maybe twice.

8 Q. When did those meetings take place
9 to the best of your recollection?

10 A. Throughout the last week.

11 Q. So twice last week; is that right?

12 A. Yes.

13 Q. When you say with counsel, are you
14 referring to Mr. Solomon?

15 A. Yes.

16 Q. Were other members of your counsel
17 team present for either/or both of those
18 meetings?

19 A. Yes.

20 Q. And who would those have been?

21 A. Monica and Ellen.

22 Q. For both meetings it was you and
23 three -- the three Reed Smith attorneys that
24 you just identified?

25 A. To the best of my recollection.

1 Monticciolo

2 Q. Anybody else attend any of -- a part
3 or all of any of those meetings?

4 A. I don't recall if Mei-Li da Silva
5 Vint was on those calls.

6 Q. So each of the meetings you
7 described were phone calls?

8 A. Yes.

9 Q. You don't recall whether Ms. da
10 Silva Vint was on either/or both of those
11 calls, correct?

12 A. Correct.

13 Q. Anyone else that may have been on
14 those calls apart from yourself, the three Reed
15 Smith attorneys you identified and possibly Ms.
16 da Silva Vint?

17 A. Not that I recall at this moment.

18 Q. Were those teleconference meetings
19 or video conference meetings?

20 A. I would describe them as attempted
21 video conference usually turns to be
22 telephonic.

23 Q. So you attempted to do video
24 conferences, but neither -- that didn't work
25 either time, so you resolved yourselves to have

1 Monticciolo

2 teleconference meetings. Did I get that right?

3 A. I can't recall if it was
4 specifically both times or not, but it's always
5 problematic.

6 Q. Did you look at documents or because
7 it was telephonic that was too difficult?

8 A. I don't recall if we looked at
9 documents specifically on those calls, during
10 those calls.

11 Q. Roughly how long did those meetings
12 last?

13 A. I would be guessing.

14 Q. They both happened last week, right?
15 Can you give me your best recollection?

16 A. I would again be guessing. They
17 weren't dramatic.

18 Q. Sorry?

19 A. They weren't significant in my
20 recollection.

21 Q. Let's go with the first one. When
22 was the first one? Do you know what day of the
23 week it was?

24 A. I don't, sorry.

25 Q. Do you know when the second one was?

1 Monticciolo

2 A. More recent than that, but I don't
3 recall. I have had a lot going on, so in a
4 brief touch base this weekend, Saturday and
5 Sunday if I think that through.

6 Q. The brief touch base that you
7 described is separate and apart from the two
8 conferences you previously testified to or is
9 that one of the two?

10 A. No, it's one of the two.

11 Q. Cumulatively would you say you spent
12 more or less than five hours preparing for this
13 deposition over the course of the last week and
14 by week I mean including dating back to last
15 week?

16 A. I don't keep a general amount of
17 hours I spent on this.

18 Q. So you don't know? You have no way
19 of telling me whether it was more or less than
20 five hours?

21 A. I have a very busy schedule.

22 THE COURT REPORTER: I'm sorry.

23 Could you speak louder? I'm having
24 trouble hearing you.

25 MR. CYRULNIK: Me too.

1 Monticciolo

2 (Brief discussion held off the
3 record.)

4 A. I have a busy schedule and I wasn't
5 recording hours, but I spent a reasonable
6 amount of time preparing.

7 Q. So you don't know whether it was
8 more or less than five hours, is that right,
9 cumulatively?

10 A. Right.

11 Q. How about ten hours? Do you know
12 whether it was more or less than ten hours?

13 A. I answered that question.

14 Q. Sorry?

15 A. I answered that question already.

16 Q. How could you have answered that
17 question? I just asked it.

18 A. Again, I don't. I wasn't keeping
19 track of the hours. I spent a reasonable
20 amount of time getting comfortable with the
21 materials.

22 Q. How about 20 hours, Mr. Monticciolo?
23 Do you know whether it was more or less than 20
24 hours that you spent over the course of the
25 last week preparing for the 30(b)(6)

1 Monticciolo

2 deposition?

3 A. The same answer.

4 Q. How about 50 hours?

5 MR. SOLOMON: The question keeps
6 being more or less than 50 you are going
7 to get the same answer.

8 A. Same answer.

9 Q. How about 100 hours,
10 Mr. Monticciolo, do you know whether you spent
11 more or less than 100 hours over the course of
12 the last week preparing for this deposition?

13 A. Same answer.

14 Q. How about 168 hours,
15 Mr. Monticciolo, do you know whether you spent
16 or more less than 168 hours over the course of
17 the last week preparing for this deposition?

18 A. The same answer.

19 Q. You understand that you are under
20 oath today?

21 A. Yes.

22 Q. And that you have to answer my
23 questions truthfully?

24 A. Yes.

25 Q. You understand that you are

1 Monticciolo

2 testifying today as a corporate representative
3 on behalf of Brevet?

4 A. Yes.

5 Q. Do you need to change anything about
6 the testimony that you gave at the last
7 deposition on October 7th?

8 A. No, not as I sit here.

9 Q. Did you have any discussions about
10 the substance of your testimony since your last
11 deposition?

12 A. Nothing that I can recall in depth
13 or time.

14 Q. Sorry, I didn't hear the answer.
15 Can you try that again? I am getting a very
16 fuzzy, I don't know if anyone else is hearing a
17 very fuzzy sound when you speak in the
18 background, but it's hard to hear. I'll do my
19 best if that's the best you could do.

20 A. Sure. No, not of any depth or time
21 on it.

22 Q. When you say not of any depth, did
23 you have any discussions at all about the
24 substance of your testimony since your last
25 deposition?

1 Monticciolo

2 A. Yes.

3 Q. Were those with anyone other than
4 counsel?

5 A. No.

6 Q. You did have discussions about the
7 substance of your testimony with your counsel
8 from Reed Smith; is that right?

9 A. Yes.

10 Q. Did you review your deposition
11 transcript?

12 A. No.

13 Q. Are you aware of any reason why you
14 would be unable to provide competent testimony
15 today?

16 A. No.

17 Q. Let's start with Topic 26. Who was
18 responsible for the decision to terminate
19 Mr. Iacovacci from Brevet?

20 MR. SOLOMON: Jason, I'm going to
21 pull up 26 or can we show the witness the
22 topic or can you read it to him?

23 MR. CYRULNIK: I mean if you need
24 the topic for some reason, you will let me
25 know, but right now I'm just asking

1 Monticciolo

2 questions. I was orienting you primarily,
3 Lou, but you can strike the reference to
4 the topic and just focus on the question,
5 Mr. Monticciolo.

6 Q. Who was responsible for the decision
7 to terminate Mr. Iacovacci from Brevet?

8 A. Brevet was.

9 Q. When you say Brevet was, are you
10 referring to anybody in particular or are you
11 referring to the corporate entity?

12 A. I'm referring to the corporate
13 entity.

14 Q. Well, how does the corporate entity
15 make decisions?

16 A. We have policies and procedures that
17 we follow.

18 Q. Who follows those policies and
19 procedures to make the decisions?

20 A. So in the fall scenario, it was a
21 long process. As I recall in May, Mark had
22 identified in his periodic e-mail reviews that
23 there was some suspicious activity,
24 recommendations were made that we would pursue
25 it further, which in my capacity as CEO I

1 Monticciolo

2 agreed with. I pursued that with outside
3 counsel.

4 During that time we continued to
5 negotiate in good faith, and I would say there
6 was a turning point some time in -- I remember
7 in August or so, the end of the summer where
8 the negotiations had returned to being a
9 discussion around noncompete.

10 Our firm really looks to determine
11 that that was the objective as a permanent
12 exiting from the workforce. That's why we
13 listed it with death and permanent disability.
14 So there was a bit of a heightened awareness of
15 what was really going on and I believe in -- I
16 think in early October there was a
17 recommendation made by Mark, the outside
18 counsel, in support of folks like the IT, HR
19 compliance to recommend the termination of Paul
20 for what I believe was termed egregious
21 corporate policies and procedures.

22 This was a little bit of a surprise
23 to us because things had been going on a course
24 and you know, while that process was proceeding
25 and we felt pretty comfortable enough to this

1 Monticciolo

2 point that our trade secrets and be protected.
3 We have clear policies and procedures about
4 that.

5 If there was a termination, that
6 Paul would abide by those policies and
7 procedures, protect all the materials and all
8 the various sort of manuals that legislate how
9 we do that and that recommendation was made to
10 terminate him and I agreed with it.

11 I recall and I know that the letter
12 was signed by Mark Callahan for Paul's
13 termination.

14 Q. Let me try to break up some pieces
15 of your answer. I know you a couple of times
16 referenced decisions being made or
17 recommendations being made in the past, so I
18 want to better understand who made the actual
19 recommendation, not that it was made.

20 Let's start with the May review. I
21 believe you said you -- that there were
22 periodic reviews including one that was in May.
23 Can you describe to me what you mean by
24 periodic reviews of Mr. Iacovacci's e-mails?

25 MR. SOLOMON: I object to the form.

1 Monticciolo

2 There is no foundation.

3 A. Yes, I would say that is a question
4 that is for Mark Callahan and the people who do
5 those reviews.

6 Q. Well, you testified that there were
7 periodic reviews. Is that -- are you recanting
8 that testimony?

9 A. No. I'm saying they presented it to
10 me as part of their periodic reviews.

11 Q. When you say as part of their
12 periodic reviews, were you aware that they --
13 Mr. Callahan was conducting periodic reviews of
14 Mr. Iacovacci's e-mail prior to May of 2016?

15 A. I am aware that he was doing what he
16 had to do in his job to be able to properly
17 follow the policies and procedures --

18 Q. I appreciate that --

19 A. -- under the advice that it included
20 periodic reviews of the e-mails.

21 Q. I appreciate that. And this
22 deposition is going to go a lot longer if we
23 can't stick the questions I am asking. I don't
24 want to know whether you would be surprised. I
25 don't want to know whether you were aware of

1 Monticciolo

2 something else. I just want to know whether or
3 not prior to May of 2016 you were aware that
4 Mr. Callahan was conducting periodic reviews of
5 Mr. Iacovacci's e-mail?

6 MR. SOLOMON: I object to the
7 question. It's beyond the 30(b)(6)
8 statement as well.

9 Q. Go ahead, Mr. Monticciolo.

10 A. Again, my response is I don't know
11 if -- you know, it is just not Paul Iacovacci's
12 e-mails that are reviewed. It is one of the
13 ways that I understand our compliance efforts
14 are done to review e-mails and correspondence
15 in accordance under our regulations with the
16 SEC.

17 Q. Let me ask the question again. Were
18 you aware, prior to May 2016, that Mr. Callahan
19 was engaging in periodic reviews of
20 Mr. Iacovacci's e-mail?

21 MR. SOLOMON: Same objection as
22 before.

23 A. I cannot say that I was aware
24 specifically of Paul Iacovacci's. As part of
25 our role it is to review all correspondence and

1 Monticciolo

2 all e-mails periodically.

3 Q. Okay. I believe you said, so you --
4 withdrawn.

5 You were aware that Mr. Callahan was
6 engaging in periodic reviews of employees'
7 e-mails even if you didn't know which specific
8 employees were included in that prior to May of
9 2016; is that right?

10 MR. SOLOMON: I object to the
11 question as beyond the scope of the
12 30(b)(6) statement.

13 A. The answer is we are required to
14 review correspondence periodically, including
15 e-mails and other forms having produced and our
16 manuals and our policies that outlined those
17 guidelines and what we do there.

18 Q. So you were aware, prior to
19 May 2016, that Mr. Callahan was engaging in
20 periodic reviews of employees' e-mails; yes or
21 no?

22 MR. SOLOMON: Same objection.

23 A. As part of his job I would agree,
24 yes, that he was doing that, amongst other
25 things.

1 Monticciolo

2 Q. I know you would agree he was doing
3 that. I am asking whether you are aware of
4 that prior to May of 2016; yes or no?

5 MR. SOLOMON: Same objection.

6 A. Yes, I was aware that was part of
7 the role of maintaining a compliance with the
8 regulators.

9 Q. Was Mr. Callahan a member of the
10 compliance team?

11 A. He was one of the senior executives
12 of the firm, partner. We all have a
13 responsibility including wearing multiple hats
14 at times.

15 Q. Once again was Mr. Callahan part of
16 the compliance team?

17 A. The compliance team would involve
18 the specific people as well as the senior
19 management and the partners of the firm. Those
20 are responsible to be a registered advisor.

21 Q. So, yes, Mr. Callahan also worked as
22 part of the compliance team in addition to his
23 other roles?

24 A. That is not what I said. I said we
25 all have the responsibility. How we pursue it,

1 Monticciolo

2 if he feels that is to be part and to assist
3 with compliance, then yes.

4 Q. Do you know whether Mr. Callahan was
5 asked by compliance to be engaging in the
6 periodic reviews of employees' e-mails that you
7 referenced a few moments ago?

8 MR. SOLOMON: I object. It goes
9 beyond the scope of the 30(b)(6) notice.

10 A. I do not know if he was asked nor do
11 I believe he would need to be.

12 Q. Why do you not believe he would need
13 to be?

14 A. Again, we are all part of a
15 registered investment advisor and responsible
16 parties and that was part of the duty.

17 Q. How periodic were the reviews that
18 you were referring to?

19 A. Again, I don't know. I'm not the
20 one who does them.

21 Q. Do you know whether -- is it your
22 view that periodic reviews are required by the
23 relevant regulations, that is periodic reviews
24 of employees' e-mails?

25 MR. SOLOMON: I'm going to continue

1 Monticciolo

2 to object as being beyond the scope of the
3 30(b)(6) notice.

4 A. It's a requirement to sufficiently
5 be aware and monitor. I'm not going to tell
6 you if I believe that that is periodic or not.
7 It could be more frequent than what could be
8 periodic. It could be less sufficient in the
9 eyes of the manager.

10 Q. So, you can't tell me how often the
11 periodic reviews that you referenced took
12 place?

13 A. Correct. That is not my job in the
14 company. We have people, obviously policy and
15 procedures and responsibilities who would
16 determine what is sufficient.

17 Q. Who can tell me how often the
18 periodic reviews that you referenced of
19 employees' e-mails took place?

20 MR. SOLOMON: Objection. This goes
21 beyond the scope of the 30(b)(6) notice.

22 A. Mei-Li da Silva Vint.

23 Q. Anyone else?

24 A. I'm sure there have been many people
25 over the history of the firm. I don't have

1 Monticciolo

2 their names off the top of my head that have
3 that responsibility.

4 Q. Did you look into that issue to
5 prepare for this 30(b)(6) deposition?

6 A. I did not. It was not part of one
7 of the questions.

8 Q. Mr. Monticciolo, is it your
9 testimony that Mark Callahan was not
10 specifically looking through Paul Iacovacci's
11 e-mails in May 2016, but that instead it was
12 part of just a general periodic review that was
13 taking place irrespective of Mr. Iacovacci's
14 announced intentions with respect to leaving
15 the company?

16 MR. SOLOMON: I object to the
17 question because it goes beyond the scope
18 and I object to this form. Go ahead.

19 A. I did not say that and I do not know
20 if he was looking at others as part of that
21 review.

22 Q. Well, if you didn't say that, then I
23 totally misunderstood your prior testimony, so
24 you'll forgive me for going back to it, but you
25 referenced in your answer to my first question

1 Monticciolo

2 or one of my earliest questions today to the
3 fact that a recommendation was made based on
4 Mr. Callahan's periodic reviews of
5 Mr. Iacovacci's e-mails in May of 2016. Do you
6 generally recall that testimony?

7 MR. SOLOMON: I think that misstates
8 his testimony. I object to the form of
9 the question.

10 MR. CYRULNIK: Lou, I asked him
11 whether he recalls it. He can answer it
12 for himself. You don't need to try to
13 answer every question for him.

14 Q. Go ahead, Mr. Monticciolo.

15 MR. SOLOMON: You shouldn't misstate
16 his testimony. By the way, you shouldn't
17 be repeating testimony anyway, okay?
18 That's not your job.

19 MR. CYRULNIK: Thanks for the
20 advice. Lou, I am going to ask you to
21 please try and keep yourself in check.

22 MR. SOLOMON: Okay and I am going to
23 ask you to please keep your tone in check
24 in terms of asking me to keep myself in
25 check. These are proper objections. I

1 Monticciolo

2 continue and I will continue to make them.

3 MR. CYRULNIK: I have no doubt.

4 Q. Mr. Monticciolo?

5 A. So, again I believe if my testimony
6 was understood to be that it was -- Mark was
7 doing it specifically for Mr. Iacovacci, I do
8 not know that it was specifically for
9 Mr. Iacovacci. I know that it was -- it seemed
10 to me at least, it was part of Brevet's
11 periodic reviews of e-mails produced by Mr.
12 Callahan.

13 Q. Who told you that it was part of a
14 periodic review of e-mails as opposed to a
15 specific review undertaken for the purpose of
16 analyzing or assessing Mr. Iacovacci's role
17 with the company and work with the company?

18 A. I think it was Mr. Callahan.

19 Q. So you do know that Mr. Callahan
20 represented the May 2016 review of
21 Mr. Iacovacci's e-mails to be part of a
22 periodic review, but you don't know in your
23 corporate representative capacity whether that
24 is accurate or whether a specific review was
25 indeed undertaken with respect to

1 Monticciolo

2 Mr. Iacovacci? Did I understand the
3 distinction you are drawing between what you do
4 know and what you don't know?

5 MR. SOLOMON: I object to the
6 question. It misstates the testimony.

7 A. To be clear, I don't know if it was
8 part of a broad period e-mail review.

9 Q. But you do know that Mr. Callahan
10 told you that it was, right?

11 A. I do know that he said during his
12 periodic review of e-mails he came across these
13 e-mails with Paul.

14 Q. And that was in May of 2016, right?

15 A. I believe that's correct.

16 Q. How did he describe the suspicious
17 e-mails that he came across during that review?

18 A. I don't recall the exact words, but
19 concern and suspicious.

20 Q. Did you ask him what he meant?

21 A. I probably did. I recall I did.

22 Q. What did he tell you?

23 A. It is concerning.

24 Q. Well, I appreciate that he told you
25 it's concerning and they are suspicious, but

1 Monticciolo

2 did you ask him to explain what he was talking
3 about?

4 A. Yes.

5 Q. What did he tell you?

6 A. It appeared that a large number of
7 our trade secrets and critical confidential
8 information appeared to be being sent outside
9 of Brevet, which is very concerning.

10 Q. When you say appear to be sent
11 outside of Brevet, are you referring to the
12 fact that these e-mails or other materials were
13 being sent to Mr. Iacovacci at a non-Brevet
14 e-mail address or are you referring to
15 something else?

16 A. I think our policies are clear on
17 what you are allowed to do with the documents.
18 Anything outside of Brevet is a violation of
19 numerous of our policies without written prior
20 approval. So yes, that would include his
21 personal e-mail and any other places that he
22 may have put them outside of Brevet.

23 Q. I appreciate that and once again,
24 I'm happy to go as long as you want to go, but
25 if you want this deposition to be a little bit

1 Monticciolo

2 more concise, it's going to be useful to focus
3 on the question that I'm asking and so with
4 respect to the last question I had asked, I
5 heard a partial answer included in the lengthy
6 answer that you gave, but I want to make sure
7 that I'm understanding.

8 When you say that you came to learn
9 that some of your confidential materials or
10 trade secrets or whatever, however you refer to
11 them, were being sent quote "outside of
12 Brevet," are you referring to the fact that
13 they were being sent to Mr. Iacovacci or being
14 kept by Mr. Iacovacci outside of his Brevet
15 e-mail and related accounts or machines or are
16 you referring to the fact that they were being
17 sent outside of Brevet to somebody other than
18 Mr. Iacovacci? I'm talking about May 2016 in
19 particular.

20 A. I think it was both, but definitely
21 to his personal e-mail.

22 Q. Setting aside his personal e-mail,
23 what did you learn in May 2016 was being done
24 with Brevet confidential material?

25 A. I believe the company produced

1 Monticciolo

2 numerous documents on this topic and
3 Mr. Callahan enumerated extensively a list of
4 those e-mails. He enumerated a small subset.

5 Q. I'm sorry, I didn't know you were
6 done. You said he enumerated extensively.
7 You're referring to what he did when he
8 discussed this with you in May of 2016 or are
9 you referring to something else?

10 A. I'm referring to one of his
11 affidavits.

12 Q. Which affidavit are you referring
13 to, Mr. Monticciolo?

14 A. I would have to go and check which
15 one, but there was one in September of 2018 and
16 there was another one in January of 2018.

17 There is a numeration of what I
18 understand to be a very small subset of the
19 thousands of e-mails that are on this topic,
20 but I believe there are maybe several hundred
21 there.

22 Q. It's your testimony that the list of
23 a subset of -- a small subset of thousands of
24 e-mails that you discovered were being sent out
25 outside of Brevet, that is a list that was

1 Monticciolo

2 discovered in May of 2016; is that right?

3 A. As I recall, yes.

4 Q. Sitting here today as the corporate
5 representative of Brevet, do you know one way
6 or the other whether that list contained any
7 e-mails that were sent outside of Brevet not to
8 Mr. Iacovacci?

9 A. I recall that it did.

10 Q. Can you identify for me which
11 e-mails were sent -- containing alleged Brevet
12 proprietary information were sent outside of
13 Brevet, not to Mr. Iacovacci, as you came to
14 learn in May of 2016?

15 A. Again, when I believe we produced
16 these materials and you have Mark's affidavits.
17 If you want to go through it or you haven't
18 read them, we can do that.

19 Q. Well, I'm asking you a very specific
20 question. So if you need the affidavits I'm
21 happy to show them to you. We will get them
22 uploaded and my colleague will tell me when
23 they are there and we can go back to that
24 question.

25 A. Perfect.

1 Monticciolo

2 Q. Why didn't you fire him then and
3 there, May 2016, Mr. Monticciolo?

4 A. As we have policies and procedures,
5 we will investigate things to make sure that we
6 are making proper decisions. We were
7 negotiating his departure. We thought it was
8 in good faith at that point in time.

9 We have great protections, trade
10 secrets, confidential information that are
11 returned or destroyed by anybody who leaves
12 Brevet. Our expectation was that this would
13 never leave the firm and were unsure as to
14 whether or not that was really a breach at that
15 point in time.

16 Q. I didn't follow the answer. Let me
17 start with the end.

18 Why were you unsure whether or not
19 Mr. Iacovacci sending e-mails outside of Brevet
20 to others and to himself was a breach of his
21 obligations to the company in May 2016?

22 A. As I said, we have policies and
23 procedures. We don't knee jerk things. There
24 is a process. The process is properly
25 followed. We want to make sound decisions

1 Monticciolo
2 particularly with a partner who is quite
3 surprising if that was true. We weren't going
4 to knee jerk.

5 Q. Mr. Monticciolo, would you
6 characterize sending Brevet trade secrets and
7 confidential information outside of Brevet as
8 an egregious breach of a partner's obligations
9 to the company?

10 A. If it were true, yes.

11 Q. You had learned in May of 2016 that
12 Mr. Iacovacci had done just that, right, that
13 he had sent Brevet trade secrets and
14 confidential information outside of Brevet,
15 right?

16 A. Again, we have a process to ensure
17 that we do things properly. We double-check.
18 We bring in independent parties. We take, you
19 know, something of this seriousness very
20 seriously. We don't knee jerk.

21 Q. I appreciate that and if the plan
22 here is to reference policies and procedures as
23 much as possible without putting any meat on
24 the bone, this is going to be a very long day.
25 My question to you is very straightforward.

1 Monticciolo

2 You had seen or Mr. Callahan had
3 reported to you directly that thousands and
4 thousands of breaches had occurred whereby
5 Mr. Iacovacci was sending Brevet confidential
6 materials and trade secrets outside of Brevet.

7 What else did you need to know in
8 order to figure out whether you should be
9 terminating him?

10 MR. SOLOMON: I object to the
11 question.

12 A. May 2016.

13 MR. SOLOMON: I object to the
14 question. It misstates the testimony.

15 A. Again, I think something this
16 important we always follow a process of making
17 sure that we will investigate to make sure that
18 it isn't just, you know, coincidence,
19 particularly with something like termination
20 and particularly with Paul as the partner
21 should have known and did know, was involved in
22 all these policies and procedures. Spent his
23 entire career knowing the rules.

24 It was initially shocking that he
25 would break rules that he knew his entire

1 Monticciolo
2 career to be critical. So, of course, we would
3 take a double look and make sure we were right.

4 First, it was surprising and
5 shocking and second, it had to be confirmed.
6 It is the right process. It's best practices
7 is what we do.

8 Q. Mr. Monticciolo, what did you need
9 to confirm? You see not one, not ten, not a
10 hundred, but thousands of instances with your
11 own eyes or with Mr. Callahan's eyes of
12 Mr. Iacovacci taking Brevet confidential trade
13 secrets and materials and sending them outside
14 of Brevet.

15 Did you have one scintilla of a
16 doubt that the information that Mr. Callahan
17 was reporting to you was accurate?

18 MR. SOLOMON: Object to the
19 question. It misstates the testimony.

20 A. It's not what I said. I didn't say
21 anything about accuracy. It's proper process.
22 It was shocking. It's important. It's a
23 partner. But I had to make sure. The firm
24 always needs to make sure it's right about such
25 a material decision and that is the right thing

1 Monticciolo

2 to do, was to just make sure that they were
3 right.

4 Q. What was the firm unsure about in
5 May 2016 after Mr. Callahan had reported
6 observing thousands of instances of breaches of
7 Brevet's trade secret and confidential
8 information policies?

9 MR. SOLOMON: Object to the
10 question. Misstating the testimony.

11 A. I'm sure that Paul would have been
12 that disregarding of everything that he has
13 lived under to have actually done that as
14 egregiously as it appeared. It had to be
15 confirmed.

16 Q. I'm not following. What were you
17 unsure about? I get that you were surprised.
18 What were you unsure about?

19 MR. SOLOMON: Object to the
20 question.

21 A. Just to make sure that what we were
22 missing was accurate, that someone
23 independently looked over our shoulder and said
24 could a partner really do this? Shocking that
25 this was the case. We didn't want to jump to

1 Monticciolo

2 any conclusions. We wanted to make sure we
3 were right.

4 Q. For example, Mr. Monticciolo, were
5 you unsure whether or not Mr. Iacovacci was
6 sending these e-mails to his own personal
7 address for reasons like he needed to print
8 those things at home? Is that one thing you
9 wanted to double-check and make sure that
10 wasn't what was going on?

11 A. No, that was not one of the reasons.

12 Q. Sorry, I didn't mean to cut you off.
13 Go ahead.

14 A. Well, no, because company policy is
15 very clear that that is not what you do and
16 without prior written approval, of course, and
17 obviously, you know, I can see if there is a
18 panic once or twice, but we had to understand
19 what was going on here and make sure we had a
20 full assessment of it. This is a material
21 regulatory violation.

22 How do we know that Paul wasn't
23 using the information for insider trading? How
24 do we know that Paul wasn't using material
25 nonconfidential information of private

1 Monticciolo

2 companies to his advantage. These are very
3 serious issues that needed to be looked at
4 beyond just our internal people. We need to
5 make sure that it couldn't actually be true
6 that Paul was doing this. It was quite a
7 surprise.

8 It's a very uncommon thing that
9 people in these positions know better and Paul
10 knew better and it was surprising to us. We
11 wanted to make sure, confirm it separately.

12 Q. I guess the trouble I'm having,
13 Mr. Monticciolo, is understanding how it is you
14 are jumping from we were so surprised, what a
15 terrible thing, I couldn't believe it, I
16 couldn't believe my eyes, in all of that piece
17 of your answer, the entire piece of your answer
18 and how that translates into we needed time to
19 confirm that this was happening.

20 Do you appreciate the difference
21 between being surprised about something and
22 being unsure about what actually transpired?

23 A. I think you're having a very linear
24 single point of view of this that it was just
25 dealing with materials. What happens if he was

1 Monticciolo
2 doing criminal activities, insider trading,
3 theft of private company information? We need
4 to be sure. We only -- I'm pretty sure Mark
5 only looked at a small subset. It needed to be
6 reviewed. This could have been a major
7 regulatory problem. We had no idea what Paul
8 may have been doing.

9 Q. I appreciate that you may have
10 wanted to look or may have felt the need to
11 look more into this in terms of your own
12 regulatory compliance issues. That's not my
13 question though.

14 My question is, why did you not
15 terminate Mr. Iacovacci in May after you had
16 learned that he had sent thousands of e-mails
17 containing Brevet proprietary information or
18 trade secrets outside of Brevet?

19 MR. SOLOMON: Object to the
20 question. It misstates the testimony and
21 it also was asked and answered.

22 Q. Mr. Monticciolo, let me just break
23 in with my own question. Did I just misstate
24 your testimony?

25 A. I don't believe that was exactly

1 Monticciolo

2 what I said correct.

3 Q. What did I misstate? I didn't
4 purport to quote your testimony. I tried to
5 summarize it as best I could, but what did I
6 misstate about your testimony in my last
7 question from your view, if anything?

8 MR. SOLOMON: I object to the
9 question.

10 A. I think you characterized that we
11 viewed thousands of e-mails at that point. I
12 think the affidavits are much more clear on
13 that, but the fact that it was conclusive is
14 not the point. I said it was concerning and
15 potentially egregious. That needs to be
16 confirmed. This is no small matter that
17 anybody would be making a knee jerk decision
18 on. He was a partner. We had trust in him.
19 We knew his experience. He had been on the
20 street as long as me, if not longer.

21 We all know the rules. We all know
22 you don't do this anywhere, any time, any
23 reason and yet it appeared that maybe there was
24 the complete, you know, neglect for that. So
25 it needed to be looked into and we thought it

1 Monticciolo

2 was significant enough that it be pursued
3 outside of Brevet to make sure we have a clear
4 view on it. Obviously we knew it was going to
5 be quite a bit of work. It had to be done.

6 Q. You said that maybe -- it appeared
7 that maybe he had done the exact opposite. I'm
8 not following why this was a question for you.
9 It sounds like you saw these e-mails either
10 with your own eyes or Mr. Callahan saw them
11 with his.

12 What else did you need to know in
13 order to feel that Mr. Iacovacci needed to be
14 terminated from Brevet?

15 A. As I said before, we do not knee
16 jerk. We would not knee jerk with something
17 this material. It is best practice. It is --
18 our approach on this that if Mr. Callahan -- if
19 Mr. Iacovacci was doing this, we wanted to
20 confirm it definitively and we wanted to make
21 sure that we weren't going to have go to the
22 regulators with something more egregious like
23 insider trading or theft of private company
24 information.

25 Q. Well, you can confirm all those

1 Monticciolo

2 things after you terminated him, right?

3 A. That would not be good business
4 practice.

5 Q. Why not?

6 A. Because it's always best to know
7 where we stand definitively and we are not
8 going to knee jerk with a partner. This is a
9 partner of the firm. You wouldn't do that with
10 your law partners, would you?

11 Q. Well, Mr. Monticciolo, did you need
12 to understand why Mr. Iacovacci was sending
13 these materials to his personal e-mail address
14 in order to determine whether or not you should
15 terminate him?

16 A. Amongst the many things we were to
17 determine as I have stated previously, yes.

18 Q. So you didn't feel comfortable
19 terminating him simply because he had forwarded
20 these e-mails to his personal e-mail address.
21 You wanted to know what the purpose of
22 forwarding these e-mails was before you made a
23 determination as to whether or not that purpose
24 gave rise to grounds for termination; is that
25 fair?

1 Monticciolo

2 A. That is not fair. That is not what
3 I said. I said why and what I mean by why on
4 that is why so many, why this process, why
5 violate the basic rules. Not why was there a
6 business purpose or that I wasn't clear that
7 there was a business purpose. Just why so
8 many? Why were they, you know, in this scope?
9 Were they limited to just our trade secrets?
10 Were there, like as I said, nonpublic
11 information in there?

12 Q. What reason could you possibly have
13 discovered for it that would have been
14 sufficient for you to determine that the fact
15 that he had e-mailed all these documents to
16 himself was not sufficient grounds for
17 termination?

18 A. Again, as I said, at that stage we
19 were looking to understand the scope and
20 magnitude and why terminate him? We were
21 trying to determine which of the many
22 violations and the magnitude of those
23 violations if they were worse than just trade
24 secrets which could be criminal stuff and
25 insider trading and that is I believe our duty

1 Monticciolo

2 and best practices.

3 Q. Well, they didn't need to be
4 criminal violations in order for you to
5 terminate him, right?

6 A. I believe it is the best practice
7 and our practice to make sure that we are
8 confident and that it is checked with something
9 of this magnitude that it be true and accurate,
10 that it be properly assessed by preferably
11 somebody independent who, you know, can look at
12 it and say yeah, I see the same thing or assess
13 it. The lawyer has probably better assessment
14 capabilities than just employees do.

15 Q. You need a lawyer to confirm that
16 Mr. Iacovacci sending e-mails to himself was,
17 in fact, Mr. Iacovacci sending e-mails outside
18 of Brevet?

19 A. No, that's not what I said. I said
20 we needed lawyers to confirm the magnitude, the
21 depth, the complexity, the implications, the
22 clarity of the theft and/or the regulatory
23 violations.

24 Q. Let's start with the clarity of the
25 theft. I mean was there anything about what

1 Monticciolo

2 Mr. Callahan had reported to you in May of 2016
3 that was unclear with respect to whether trade
4 secrets had been stolen by Mr. Iacovacci?

5 A. You know, you are trying to ask the
6 fine line between someone stealing the formula
7 for a Coke and someone stealing kind of how the
8 process of making Coke is done. I don't know
9 which of those Mark identified in his first
10 review. There was a precursory review. I did
11 want to know did he steal the Coke formula or
12 just how we make Coke.

13 Q. The reason you wanted to know that
14 is because if he just stole how we make Coke,
15 you might have kept him around; is that right?

16 A. No, he still violated our policies
17 and procedures for distributing our trade
18 secrets outside of Brevet and our policies are
19 very clear on how you do this. They are
20 followed throughout the firm.

21 Q. So if he just violated your
22 policies, that alone was sufficient grounds for
23 you to say we are not going to keep this
24 partner around; is that right? Is that your
25 testimony?

1 Monticciolo

2 MR. SOLOMON: Object to the
3 misstatement of his testimony.

4 A. What I said was, you asked me
5 explicitly would that be grounds for it. That
6 could be grounds for it. Obviously we would
7 have to debate it and the team would make a
8 recommendation, but if it was the Coke formula,
9 that is the essence of Brevet, it's the essence
10 of Coca-Cola. Some may say we protect it like
11 the what is it, the true static equation, you
12 know inside of a safe, inside of a vault,
13 inside of a volcano, that is a good analogy of
14 what Brevet does because if you take our secret
15 and how we do what we do, you take the full
16 value of Brevet, today and tomorrow, and that
17 we need to know, was it full damage of the
18 firm? Was all of our differentiations, secrets
19 suddenly being taken outside the firm? Was it
20 a portion? Was it -- how bad was it? These
21 are material items.

22 That's why we have the safe in the
23 vault in the volcano. That is why we do it
24 because that's our business.

25 Q. Mr. Monticciolo, yes or no, did you

1 Monticciolo

2 need to know how close to Brevet's secret
3 formula the materials that Mr. Iacovacci had
4 sent himself were in order to determine whether
5 or not he would be terminated from the company?

6 A. Again, I can't answer that without
7 being that is a very specific facts and
8 circumstances and threshold question. You know
9 we would have to look at whether it rose to a
10 point where that would be the only course. It
11 seems very hypothetical.

12 Q. Well, what were the other courses
13 that you might have pursued if you found out
14 that he had stolen things that were less than
15 the secret formula?

16 A. I would have to consult with my team
17 and lawyers on what the possibilities are to
18 the protection of our trade secrets.

19 Q. I'm not following. I'm trying to
20 understand what information you lacked in May
21 of 2016 that would have caused you to delay a
22 decision as to whether or not you could
23 terminate Mr. Iacovacci from his position at
24 Brevet?

25 MR. SOLOMON: Asked and answered.

1 Monticciolo

2 Asked and answered.

3 A. And again yes, I answered that
4 question. It is very clear, it is not best
5 practice to knee jerk. It was shocking if a
6 partner of the firm with the knowledge and
7 experience of Paul could have so grossly and
8 blatantly violated the most common basic
9 premises of our business and the regulations
10 that we were not going to knee jerk and just
11 confirm and also determine for the protection
12 of Brevet as to whether or not it actually rose
13 to a much larger regulatory problem. It would
14 be unwise to do anything but.

15 Q. The question certainly has been
16 asked. I can assure, at least as I understand
17 it, it hasn't been answered. I appreciate the
18 fact that you have certain things you want to
19 say about why it is you waited. That's why I'm
20 trying to formulate much more specific
21 questions so that I can better understand what
22 it is you are trying to say.

23 The question I asked you last time
24 and I will ask you again --

25 MR. SOLOMON: I object.

1 Monticciolo

2 MR. CYRULNIK: You object all you
3 want to, Lou. Please try and keep it in
4 check.

5 MR. SOLOMON: Now I object to your
6 offensive statement made for the second
7 time today.

8 MR. CYRULNIK: Done?

9 Q. Mr. Monticciolo, I want to know
10 whether there was any information that you were
11 missing in May of 2016 that was necessary in
12 your view to determine whether or not Brevet
13 had the right to terminate Mr. Iacovacci?

14 I don't want to know what other
15 information you were interested in getting. I
16 don't want to know what you think best
17 practices would be. I'm asking you about the
18 data, the information.

19 Was there any information that you
20 did not have in May of 2016 that precluded
21 Brevet from determining that it had the right
22 to terminate Mr. Iacovacci; yes or no?

23 MR. SOLOMON: Objection. Objection.
24 Asked and answered.

25 A. I'll repeat the information without

1 Monticciolo

2 confirmation of something of this magnitude is
3 not sufficient in our minds until we confirm
4 it.

5 Q. So you didn't confirm. You needed
6 to confirm what? May 2016 you know that he is
7 sending all these e-mails to himself with these
8 trade secrets, confidential information, but
9 you needed to confirm what?

10 MR. SOLOMON: Object to the
11 question. Misstated his testimony.

12 A. We confirmed that that was true and
13 accurate. Things happen, computer systems,
14 maybe the search was done wrong. Maybe things
15 weren't right. Something of this magnitude of
16 a partner, you know, had to double-check
17 everything.

18 Q. So you weren't sure after
19 Mr. Callahan reported to you the results of his
20 review of Mr. Iacovacci's e-mail, you weren't
21 sure whether or not the thousands of instances
22 or hundreds of instances of e-mails
23 Mr. Iacovacci sent with proprietary trade
24 secret information had, in fact, been sent or
25 whether there was some computer error that was

1 Monticciolo
2 showing you hundreds or thousands of instances
3 of such e-mails being sent; is that right?

4 MR. SOLOMON: I object to the
5 question. You've misstated his testimony
6 and you now have misstated when he
7 corrected you.

8 MR. CYRULNIK: Mr. Solomon, I would
9 like to try and make this simple. I would
10 like you to limit your objections to
11 objection to form. Every time you say
12 misstated testimony, number one, it
13 underscores the fact that you don't know
14 what it means to misstate testimony. I'm
15 not stating testimony. I'm asking a
16 question.

17 And number two, it interferes with
18 this deposition. Number three, it
19 prolongs this deposition. So please do us
20 both a favor. I'm happy for you to get
21 your objection to form on the record as
22 many times as you want to, you'll preserve
23 all your rights. Just say objection to
24 form and please allow the witness to
25 answer the question without interference.

1 Monticciolo

2 MR. SOLOMON: I object to the
3 question. I object to you misstating his
4 testimony and I object to the fact that he
5 has already corrected your misstatement
6 and you should be listening to his answers
7 too.

8 MR. CYRULNIK: Mr. Solomon, you are
9 not permitted to coach a witness in the
10 middle of a deposition telling him what he
11 did state or did not state. I'm not
12 purporting to characterize or state his
13 testimony.

14 I am asking the witness questions.
15 You know it. You're an experienced
16 lawyer. Please stop interfering with this
17 deposition and coaching the witness.

18 MR. SOLOMON: I think you're being
19 abusive, so I'm going to put my objections
20 on the record.

21 MR. CYRULNIK: Put your objections
22 on the record and stop talking. It's
23 objection to form and then the witness can
24 answer the question if he understands it.

25 Q. Mr. Monticciolo, do you understand

1 Monticciolo

2 the question I asked?

3 A. Can you repeat it?

4 Q. I want to know whether or not you
5 are telling us that you had some doubt in May
6 of 2016 as to whether or not the hundreds or
7 thousands of instances that you saw
8 Mr. Iacovacci sending e-mails outside of Brevet
9 were potentially bad search results or
10 misinformation?

11 MR. SOLOMON: I think you're
12 misstating testimony to the time. I'm
13 going to object on that basis.

14 MR. CYRULNIK: Lou, you have to stop
15 coaching the witness. This is totally
16 impermissible.

17 MR. SOLOMON: You are not entitled
18 to misstate his testimony like you are.

19 MR. CYRULNIK: Mr. Solomon, I'm
20 entitled to ask the witness whatever
21 question I want to ask. I'm not
22 purporting to characterize his testimony.
23 You know it. I said it on the record four
24 times. So please stop.

25 MR. SOLOMON: Go ahead.

1 Monticciolo

2 A. So my testimony didn't say doubt. I
3 said it needs to be confirmed to be sure, to
4 confirm. I'm sure that you doubt when you
5 confirm.

6 Q. Mr. Monticciolo, you don't need to
7 confirm something that you know already, right?

8 A. It is best practice to measure
9 twice, cut once and that is what we do. That
10 is what every firm who has good corporate
11 practice does.

12 Q. Mr. Monticciolo, you don't need to
13 confirm something that you already know, right?

14 A. I don't see how that is relevant to
15 this point.

16 Q. That's fair. Thankfully you're not
17 taking the deposition, so you don't need to see
18 the relevance. That's for the court to decide.

19 MR. SOLOMON: Object to the form.

20 Q. I'm asking a straightforward
21 question. Do you need to confirm something
22 that you already know; yes, no or I have no
23 idea?

24 A. One more time on the question.

25 Q. Do you need to confirm something

1 Monticciolo

2 that you already know; yes, no or I don't know?

3 MR. SOLOMON: You don't have to
4 limit yourself to his -- I object to the
5 form.

6 MR. CYRULNIK: Lou, this is all on
7 the record. The court will see the
8 coaching. It will see the colloquy.

9 MR. SOLOMON: Then I can't wait.

10 MR. CYRULNIK: In the middle of the
11 deposition you're not allowed to talk to
12 the witness telling him what to say. You
13 are not allowed to be trying to lead
14 whatever it is you want him to say. Your
15 job is to sit there, object to the form of
16 a question if you think it's objectionable
17 and to instruct on privilege. So I'm
18 asking you for the fifth time in the last
19 ten minutes to please stop. (cross talk).
20 It needs to stop, Lou.

21 Q. Go ahead, Mr. Monticciolo.

22 A. I would say, yes. It's not a black
23 and white, yes, no answer. It's yes based on
24 the magnitude and implications.

25 Q. So even though you knew that

1 Monticciolo

2 Mr. Iacovacci sent hundreds or thousands of
3 e-mails to himself containing Brevet
4 confidential information, that was not enough
5 for you to terminate Mr. Iacovacci, fair?

6 MR. SOLOMON: Object to the form of
7 the question. You're misstating his
8 testimony.

9 MR. CYRULNIK: You're doing it
10 again.

11 A. Completely unfair. That is not what
12 I said. I did not say I knew. I did not have
13 firsthand knowledge of it. I didn't do it.
14 You know that. It was very clear in the
15 affidavits of Mr. Callahan.

16 Mr. Callahan presented that he had
17 these results. So it is not to say that I
18 knew. It's the right thing to check something
19 of this magnitude. Again, it was something
20 that would be quite surprising just as if one
21 of your partners was caught embezzling escrow
22 accounts, you would be shocked. Well, that was
23 kind of the same feeling and that's where we
24 were. You would want to kind of double-check
25 and that was the right thing to do and we did.

1 Monticciolo

2 Q. You didn't personally know because
3 Mr. Callahan was the one who performed the
4 searches. So then following May 2016 did you
5 undertake personally to review the e-mails that
6 Mr. Callahan had reported to you he had found?

7 A. No, not my job.

8 MR. SOLOMON: I object to your
9 laughing at the witness.

10 MR. CYRULNIK: Lou, you really don't
11 need to object to anything other than the
12 form of a question. I don't understand.
13 This is like the first time you are in a
14 deposition.

15 MR. SOLOMON: You are laughing at
16 him. I object.

17 MR. CYRULNIK: Mr. Solomon, please
18 keep yourself under control. You need to
19 limit your objections to objections to
20 form.

21 MR. SOLOMON: Mr. Cyrulnik, please
22 keep yourself under control.

23 MR. CYRULNIK: Creative.

24 Q. Mr. Monticciolo, to make sure you
25 had everything right, to make sure you

1 Monticciolo

2 understood this shocking revelation was what
3 you thought it was, you then reached out to
4 Mr. Iacovacci and asked him to explain himself;
5 is that the next step that you undertook?

6 A. Well, that would be a bizarre step
7 if you're unsure about something. You would
8 want to confirm it first.

9 Q. Well, if you're unsure about
10 something, you wouldn't want to ask the person
11 that was your partner for so many years that
12 you couldn't believe was engaging in what you
13 were looking at to explain to you what it is
14 you were looking at?

15 A. Correct. I wouldn't want to make a
16 false accusation or assumption, have a
17 discussion on something. I think that would
18 be, you know, just as you would with your
19 partner who may be perceived to be selling
20 escrow accounts. You want to make sure before
21 you approach somebody or make a decision as to
22 whether or not maybe you should have a
23 discussion.

24 Again, that wouldn't be my position.
25 That would be guidance from outside counsel,

1 Monticciolo

2 with our HR, our compliance team. So there
3 would be quite a process there.

4 Q. But you didn't want to ask
5 Mr. Iacovacci because you didn't want to offend
6 him in case you were wrong, right?

7 A. What I said, I want to make sure
8 that I'm right.

9 Q. You want to know that you are right
10 before you went to Mr. Iacovacci and said what
11 is going on here, right?

12 A. Yeah. Maybe there was a computer
13 glitch.

14 Q. Maybe a computer glitch?

15 A. Maybe the e-mail recording was
16 wrong.

17 Q. Maybe the e-mail recording was
18 wrong. So you wanted to confirm all those
19 things before you asked Mr. Iacovacci about it,
20 right?

21 A. I believe it's best practice to
22 presume someone is innocent until proven
23 guilty. We wanted to make sure that we were
24 right about something of this magnitude.

25 Q. At which point in time did you end

1 Monticciolo

2 up reaching the level of comfort that you were
3 sure you had it right, that you had understood
4 what had happened and that you were now ready
5 to confront Mr. Iacovacci and ask him about it?

6 MR. SOLOMON: Object to the
7 question. Asked and answered.

8 A. Again, that wasn't my decision. I
9 think I have already given testimony on this.
10 It was Mr. Callahan, outside counsel, our IT
11 department, our HR, our compliance to make the
12 recommendation as to what the next steps are.

13 Q. Mr. Monticciolo, you understand that
14 you are here as a 30(b)(6) representative of a
15 company?

16 A. Yes.

17 Q. I'm asking my question again. I'm
18 not talking about you, Mr. Monticciolo. I'm
19 talking about you, Brevet, the company.

20 At what point did Brevet reach its
21 comfort level that it knew -- sufficiently knew
22 what happened so that it was ready to approach
23 Mr. Iacovacci to ask him what was going on?

24 MR. SOLOMON: Object to the
25 question.

1 Monticciolo

2 A. I don't believe that that was a path
3 that was applicable in this situation given the
4 egregiousness of this.

5 Q. Let me get this straight. I thought
6 you just told me that you were so careful as a
7 company you didn't want to even approach
8 Mr. Iacovacci to ask him about this because you
9 still wanted to do more and more confirmation;
10 did I get that right?

11 A. No, I think you mischaracterized
12 that.

13 Q. What did I get wrong there?

14 A. Again, we wanted to make sure that
15 we were correct, that it was checked
16 independently because potentially it was
17 egregious and we confirmed that it was
18 egregious. And as the outside counsel and
19 people I mentioned come to their conclusion as
20 to what the right measure is, I'm not going to
21 second guess the decision process there. It
22 was what was felt to be the right process for
23 the situation.

24 Q. Whose decision process did you need,
25 did you not want to second guess?

1 Monticciolo

2 A. The firm's procedures for making
3 recommendations for outside counsel,
4 Mr. Callahan, HR, compliance, supportive IT.

5 Q. You're going to need to be more
6 specific than that, Mr. Monticciolo, if you
7 would like this deposition to go anywhere. I
8 want to know whose decision you said you didn't
9 want to second guess?

10 A. Again, it is not an individual.
11 It's a recommendation by a group of people,
12 just to make sure that, you know, everything is
13 being done appropriately and properly and
14 thoroughly thought through.

15 Q. I want to know who made the decision
16 that you didn't want to second guess.

17 MR. SOLOMON: Objection. Asked and
18 answered.

19 A. Again, Mr. Callahan, outside
20 counsel, HR, compliance, and probably in
21 support of the information from IT.

22 Q. What Brevet entity was Mr. Iacovacci
23 terminated from?

24 A. He was terminated from the Brevet
25 Holdings, which is the place where he was an

1 Monticciolo

2 employee and FD, LLC as a member.

3 Q. All at the same time?

4 A. Yes.

5 Q. Let's throw out Brevet Holdings.

6 Was there a meeting to discuss Mr. Iacovacci's
7 termination from Brevet Holdings?

8 A. I'm not sure if there was a meeting
9 or a phone call, but I recall a recommendation
10 being made and questioning the support,
11 listening to what was provided to Mr. Callahan,
12 outside counsel, HR, compliance and I'm sure IT
13 was providing any input they had and I agreed
14 with that.

15 Q. We are back to using the passive
16 voice, Mr. Monticciolo, a recommendation was
17 made you're a 30(b)(6) witness. I want to know
18 who made the recommendation to terminate Mr.
19 Iacovacci from Brevet Holdings?

20 A. Individuals don't make a
21 recommendation. A recommendation is provided
22 by a group of people on behalf of those people
23 recommendations to do something. It's called
24 best practice. It's not an individual makes a
25 recommendation. That wouldn't be corporate

1 Monticciolo

2 practice.

3 Q. Did they all say in unison? I mean
4 somebody had to actually make the
5 recommendation if it was being done on behalf
6 of somebody else, right?

7 A. Somebody may have been speaking, but
8 speaking on behalf of the whole team. To the
9 best of my recollection, it was all those
10 people speaking.

11 Q. Let's start with who was speaking.
12 What does that mean it was all those people?
13 Who said to you, in words or in substance, we
14 recommend terminating Mr. Iacovacci from Brevet
15 Holdings?

16 A. I answered this question. I will
17 repeat it for you. Mr. Callahan, outside
18 counsel, HR, compliance.

19 Q. Let's go one by one because
20 otherwise I think it's going to get unwieldy.
21 I'm going to write down we've got Mr. Callahan,
22 outside counsel, HR, compliance. Anyone else
23 by the way?

24 A. Not that I recall.

25 Q. Let's start with Mr. Callahan

1 Monticciolo

2 because he's the only individual at least that
3 we can talk about.

4 Mr. Callahan made the recommendation
5 to you, Doug Monticciolo, or to some entity to
6 terminate Mr. Iacovacci's employment with
7 Brevet Holdings?

8 A. Made the recommendation to the CEO
9 of Brevet Holdings for approval based on their
10 recommendation.

11 Q. And you are the CEO of Brevet
12 Holdings, right?

13 A. I am.

14 Q. So Mr. Callahan made the
15 recommendation to you for your approval to
16 terminate Mr. Iacovacci from Brevet Holdings;
17 did I get that right?

18 A. Say that one more time. There was
19 some noise.

20 Q. Mr. Callahan made a recommendation
21 to you as a CEO of Brevet Holdings to terminate
22 Mr. Iacovacci from Brevet Holdings; did I get
23 that right?

24 A. No, Mr. Callahan on behalf of the
25 various roles that were represented made the

1 Monticciolo

2 recommendation for approval or denial to
3 terminate Mr. Iacovacci.

4 Q. I don't think that is inconsistent
5 with what I asked, but if it makes you more
6 comfortable, that's fine.

7 I was going to ask you who he was
8 speaking on behalf of other than himself. I'm
9 really trying to break this into baby steps
10 because I think it's the only way to get
11 through this deposition in a reasonable period
12 of time.

13 So Mr. Callahan was the voice. It
14 was Mr. Callahan's voice that made the
15 recommendation to you, Mr. Monticciolo, for
16 approval or denial of the termination of
17 Mr. Iacovacci from Brevet Holdings; did I get
18 that right?

19 A. I don't recall that it was solely
20 his voice.

21 Q. I didn't say solely in my question.
22 I'm asking right now about Mr. Callahan's voice
23 making that recommendation to you. If there
24 are other voices or if you made it on behalf of
25 other people or departments, we will get to

1 Monticciolo

2 that next.

3 Mr. Callahan's voice made a
4 recommendation to you to terminate
5 Mr. Iacovacci from Brevet Holdings and it was
6 submitted to you for approval or denial; did I
7 get that piece right?

8 A. I don't believe that's a fair
9 characterization of how the process works. I'm
10 confused that you don't understand committees
11 and processes. A team of people, somebody
12 might be speaking for them, but I believe they
13 would be speaking as the whole, not the
14 individual, and that's why we have almost all
15 the processes at Brevet work this way. One
16 person may be the spokesperson, but it's not
17 their sole decision.

18 Q. We can call it voice. We can call
19 it spokesperson. You pick the term you want
20 to. I am trying to focus on words coming out
21 of somebody's mouth. So let's use spokesperson
22 because you just used that in your answer.

23 I don't want to imply one way or the
24 other whether the spokesperson was speaking on
25 behalf of himself or one or more other

1 Monticciolo

2 entities. I just want to focus on the actual
3 spokesperson's recommendations.

4 Did Mr. Callahan, as spokesperson
5 for one or more people or entities recommend to
6 you, Doug Monticciolo as CEO of Brevet
7 Holdings, that the company terminate
8 Mr. Iacovacci's employment?

9 A. Yes.

10 Q. When did that event take place?

11 MR. SOLOMON: Asked and answered.

12 A. As I said, I think that was early
13 October.

14 Q. Can you be more specific than early
15 October?

16 A. No, I can't unfortunately.

17 Q. Do you know when it was relative to
18 when a termination letter was sent to
19 Mr. Iacovacci?

20 A. Before.

21 Q. Was it days before, weeks before?

22 A. Within a week or two as I recall.

23 Q. So you recall there being a gap of
24 time, but that the gap of time was not more
25 than a couple of weeks?

1 Monticciolo

2 A. Enough time to write the letter I
3 believe.

4 Q. So just enough time to write the
5 letter. So pretty close in time to when the
6 letter was sent?

7 A. I was using that as a metric to try
8 to measure the time.

9 Q. So you don't know if it could have
10 been earlier that day, earlier the day that the
11 letter was sent?

12 A. I don't believe it was that close
13 because we do -- we are careful about things we
14 do. We don't like to knee jerk something of
15 this importance remember.

16 Q. I forgot for a second. I forgot who
17 I was dealing with. So did Mr. Callahan make
18 that -- again we are talking about
19 Mr. Callahan, the spokesperson, did he make
20 that recommendation to you in person or over
21 the phone or in writing?

22 A. I don't recall whether it was in
23 person or over the phone.

24 Q. Did you check with him before this
25 deposition?

1 Monticciolo

2 A. I did not.

3 Q. Do you know it was oral, not in
4 writing; is that right?

5 A. I believe that's correct.

6 Q. Did Mr. Callahan tell you when he
7 made the recommendation to you whether he was
8 speaking on behalf of one or more individuals
9 or entities other than himself?

10 A. In this context he doesn't need to
11 specifically tell me which context. It's part
12 of our policy to be representing all those that
13 are supporting or involved.

14 Q. There is a policy, a Brevet policy,
15 that when you speak, you're speaking on behalf
16 of all Brevet entities?

17 A. It's not exactly what I said or
18 intended. What I mean is he was speaking on
19 behalf of the results of a group of people.

20 Q. What group of people?

21 MR. SOLOMON: Asked and answered.

22 A. Again, outside counsel, HR,
23 compliance, et cetera.

24 Q. So if I'm understanding you
25 correctly, Mr. Callahan made the recommendation

1 Monticciolo

2 to you as a spokesperson on behalf of outside
3 counsel, HR and compliance; is that right?

4 A. Ask your question one more time.

5 Q. If I understood what you said
6 correctly, Mr. Callahan made the recommendation
7 that you referenced a few moments ago as a
8 spokesperson on behalf of outside counsel, HR
9 and compliance. Did I get that right?

10 A. As I sit here I believe that to be
11 correct.

12 Q. And he didn't tell you that he was
13 speaking on behalf of any of those departments;
14 you just understood that based on general
15 policies is that -- did I get that part right?

16 A. I don't recall if he specifically
17 said that or not.

18 Q. But you know for a fact that he was
19 speaking on behalf of those three departments,
20 right?

21 A. Again, I think we already answered
22 that this was, if not was the culmination of
23 the prior May activities which culminated in
24 all those entities coming back with the result
25 of their recommendation to study further and

1 Monticciolo

2 assess the situation.

3 Q. Sorry, I missed part of what you
4 said. It was a little fuzzy. Did you say each
5 of these departments made a recommendation?

6 A. No.

7 Q. Did each of these departments make a
8 recommendation?

9 A. No.

10 Q. Was each of these departments
11 involved in the post May 2016 activity that you
12 described to confirm or learn more about what
13 had happened?

14 A. I don't know. You have to ask them
15 or Mr. Callahan.

16 Q. Well, I'm asking their corporate
17 representative. I take it you didn't have a
18 chance or didn't understand that you were
19 supposed to be checking with each of those
20 entities to confirm whether or not each of them
21 or all of them made a recommendation with
22 respect to Mr. Iacovacci's termination?

23 A. Right. I thought it was clear
24 already in the record from Mr. Callahan's
25 affidavits.

1 Monticciolo

2 Q. We will have to talk to you and your
3 counsel about that afterwards, but we are
4 asking you questions that we are entitled to
5 ask irrespective of what you think is in the
6 interrogatory responses.

7 So, sitting here today in your
8 capacity as corporate representative, you don't
9 know which of the departments you identified,
10 that is outside counsel, HR or compliance did,
11 in fact, make a recommendation to terminate
12 Mr. Iacovacci's employment with Brevet
13 Holdings; is that right?

14 MR. SOLOMON: I think that misstates
15 his testimony. Objection.

16 MR. CYRULNIK: I'm asking him, not
17 you.

18 A. That is not what I said. I said I
19 don't know, but that is not the process.
20 Again, we went through this, as a spokesman on
21 behalf of.

22 Q. I think that you just said that is
23 not what I said, but then you repeated what I
24 said. Did you or did you not know, do you or
25 do you not know, sitting here today, whether or

1 Monticciolo

2 not each of the three departments you just
3 identified, compliance, HR, outside counsel,
4 made a recommendation to terminate
5 Mr. Iacovacci, yes or no?

6 A. I do not know because there would be
7 no reason for them to make a separate
8 recommendation, so you're asking a question
9 which I thought I clearly laid out our process
10 which if you understood that would not be our
11 process and it would not be separate
12 recommendations.

13 So again I mentioned who was looking
14 into it as a group and you represented that --
15 you reiterated that Mr. Callahan was the
16 spokesperson for those people.

17 Q. We will get to Mr. Callahan, but let
18 me just try and make sure we are on the same
19 page. When I ask you do you know X, do you
20 know whether they made a recommendation, if you
21 know, but you have a very good explanation in
22 your mind as to why they didn't, the answer to
23 my question is still no and if you know they
24 did make a recommendation, the answer would be
25 yes.

1 Monticciolo

2 I will endeavor to do my best,
3 Mr. Monticciolo, to allow you to give the whys
4 if I think those are relevant and I'm sure your
5 very competent counsel sitting by your side is
6 going to ask whatever follow-up questions he
7 wants to if he feels there is something he
8 thinks he wants to get into the record or you
9 want to get into the record and you didn't get
10 an opportunity to testify to during my cross.

11 I simply asked you whether or not
12 you know, sitting here today, whether each of
13 these three departments or any of these three
14 departments made a recommendation and I just
15 want to know whether the answer is yes, I do
16 know or no, I don't know.

17 MR. SOLOMON: I object to the
18 question because it misstates his
19 testimony. You can clarify if you want
20 to.

21 MR. CYRULNIK: Lou, if you read back
22 that question and identify for me how it's
23 possible for that question to misstate any
24 testimony because it's just a question, we
25 are going to have a lot more efficient

1 Monticciolo

2 time getting through this deposition.

3 Please pay attention to the question

4 instead --

5 MR. SOLOMON: I don't need your
6 remonstration, Jason. Okay. You don't
7 need to tell me what to do.

8 MR. CYRULNIK: I think I do, Lou.

9 MR. SOLOMON: You can ask a clear
10 question right now if you wanted and you
11 are not.

12 MR. CYRULNIK: Mr. Solomon, read the
13 question. Do you have real time?

14 MR. SOLOMON: Do you have any more
15 questions for this witness? You're
16 running out of time.

17 MR. CYRULNIK: Do you have real
18 time?

19 MR. SOLOMON: I'm not answering your
20 questions. Do you have real time?

21 MR. CYRULNIK: You're refusing to
22 tell me whether you have a live transcript
23 of this deposition?

24 MR. SOLOMON: You mean is the court
25 reporter streaming it into us? She is

1 Monticciolo

2 not.

3 MR. CYRULNIK: That's what I mean,
4 yeah. Well, I think that would probably
5 be a useful investment for the future
6 because I think if you read the question
7 on the page, there was no attempt to
8 characterize any testimony. And so an
9 objection to mischaracterize the
10 testimony, which itself is objectionable
11 because all you need to do is object to
12 form, is even more unfounded when it comes
13 to a question like the one that I just
14 asked.

15 Q. Getting back to the question,
16 Mr. Monticciolo. The question for you was, do
17 you or -- do you know, sitting here today,
18 whether or not each of the departments that you
19 identified outside counsel, HR and compliance
20 made a recommendation to terminate
21 Mr. Iacovacci?

22 A. Given the guidance that you just
23 gave me a few minutes ago, no.

24 Q. Okay.

25 A. Can we take a restroom break?

1 Monticciolo

2 Q. Absolutely.

3 THE VIDEOGRAPHER: The time is
4 11:33 a.m. and we are going off the
5 record.

6 (Brief recess taken.)

7 THE VIDEOGRAPHER: The time is
8 11:48 a.m. and we are back on the record.

9 Q. Mr. Monticciolo, before the break we
10 were talking about the recommendation made to
11 terminate Mr. Iacovacci. I want to make sure
12 that I'm clear on your testimony today.

13 Yes or no, did Mr. Callahan make
14 that recommendation on behalf of HR?

15 A. Alone?

16 Q. No, not alone.

17 A. Yes, I mean it's on behalf of --

18 Q. HR?

19 A. As I said before -- so the answer to
20 that is yes.

21 Q. Did he make that recommendation on
22 behalf of compliance as well?

23 A. I believe so, yes.

24 Q. What is the basis for your testimony
25 that Mr. Callahan made the recommendation on

1 Monticciolo

2 behalf of HR and compliance?

3 A. As I recall that they were involved
4 in the process as I stated before and it
5 would -- he was the spokesperson of that
6 effort.

7 Q. I appreciate that those two
8 departments were involved in the process that
9 you described. I'm specifically trying to
10 focus in on the recommendation at the end of
11 that period of time that Mr. Callahan made to
12 you to terminate Mr. Iacovacci and I want to
13 understand the basis for your testimony, if I'm
14 getting this right, that Mr. Callahan made that
15 recommendation to terminate on behalf of both
16 HR and compliance; that is that compliance was
17 asking Mr. Callahan to recommend
18 Mr. Iacovacci's termination and that HR was
19 asking Mr. Callahan to recommend
20 Mr. Iacovacci's termination?

21 MR. SOLOMON: Object to the form of
22 the question.

23 A. To use the word on behalf of?

24 Q. Yes.

25 A. So I would say solely on behalf of,

1 Monticciolo

2 no.

3 Q. Not solely. You put the word solely
4 in. That's why this deposition is going to
5 take longer than it needs to. I'm just asking
6 whether it was on behalf of, whether it was in
7 addition to others or whether it was solely
8 both of those would be on behalf of. That's
9 why I'm trying to be careful with my questions.

10 So if you take, with that
11 clarification, Mr. Monticciolo, whether it was
12 solely or not is factored into my question. So
13 solely or not solely are both fine.

14 Did Mr. Callahan -- is it your
15 testimony Mr. Callahan made the recommendation
16 to terminate Mr. Iacovacci on behalf of
17 compliance and on behalf of HR?

18 MR. SOLOMON: Object to the form.

19 A. Yes.

20 Q. Did he tell you that?

21 A. I do not recall.

22 Q. How do you know, what did you do to
23 determine that Mr. Callahan was making that
24 recommendation on behalf of the two departments
25 you just identified?

1 Monticciolo

2 A. I think I answered that question.
3 The recommendation was made in conjunction with
4 Mark as well as these other parties.

5 Q. I don't understand what that means.
6 Can you explain that a little differently
7 please or a little more clearly?

8 MR. SOLOMON: I object to the
9 question.

10 A. Sure. Whether it was in a single
11 conversation or multiple, it was clear to me
12 that Mark was pursuing his recommendation
13 either based on or in conjunction with HR,
14 compliance and outside counsel for
15 recommendations.

16 Q. Okay. Let's get to outside counsel.
17 So it's similarly clear to you that
18 Mr. Callahan was spokesperson on behalf of
19 outside counsel in connection with
20 recommendation to terminate Mr. Iacovacci's
21 employment?

22 A. No.

23 Q. That's not similarly clear to you?

24 A. Not similarly clear. He was a
25 spokesperson for outside counsel. They were

1 Monticciolo

2 counsel. They provided guidance and
3 counseling.

4 Q. Did they make the recommendation to
5 terminate Mr. Iacovacci's employment?

6 A. I don't have firsthand knowledge,
7 but that was my understanding.

8 Q. What was the basis for that
9 understanding?

10 A. The meeting and communications with
11 Mr. Callahan.

12 Q. What about those communications
13 forms the basis for your testimony that outside
14 counsel made the recommendation to terminate
15 Mr. Iacovacci's employment?

16 MR. SOLOMON: I'm going to instruct
17 you not to give any of the substance of
18 the --

19 THE COURT REPORTER: I can't hear
20 you, Mr. Solomon.

21 MR. SOLOMON: I'm instructing the
22 witness not to communicate the substance
23 of any attorney/client discussions.

24 Q. Well, that is going to be a little
25 difficult because I think he already told me

1 Monticciolo

2 that they did make the recommendation. So I
3 will limit my question to what you have already
4 spoken about for now. It's your
5 understanding -- strike that.

6 As the 30(b)(6) corporate
7 representative of Brevet, it is your testimony
8 that outside counsel made a recommendation to
9 terminate Mr. Iacovacci's employment; is that
10 right?

11 MR. SOLOMON: Object to the
12 question.

13 A. No.

14 Q. As a 30(b)(6) corporate
15 representative, is it your understanding that
16 outside counsel did not make a recommendation
17 to terminate Mr. Iacovacci's employment?

18 A. Correct.

19 Q. So it was Mr. Callahan, on behalf of
20 or in conjunction with HR and compliance; is
21 that right?

22 A. Yes.

23 Q. Anyone else make the recommendation
24 to terminate Mr. Iacovacci?

25 A. I'm not aware, but there might have

1 Monticciolo

2 been.

3 Q. And the recommendation was made to
4 you as CEO of Brevet Holdings for your approval
5 or your denial of the recommendation; is that
6 right?

7 A. Yes.

8 Q. You chose to approve it?

9 A. Yes.

10 Q. With a heavy heart?

11 A. Always.

12 Q. Mr. Monticciolo, you have referenced
13 Mr. Callahan's affidavits earlier. If you
14 could take a look at the marked exhibits
15 folder. We've put as Exhibits 11 and 12, the
16 affidavits of Mr. Callahan. Exhibit 11 is the
17 September 25, 2018 affidavit and Exhibit 12 is
18 the January 2018 affidavit.

19 (Whereupon affidavits were marked
20 Exhibits 11 and 12 for identification as
21 of this date.)

22 Q. If you could please take a look at
23 those exhibits and tell us what you were
24 referring to earlier that would be useful? So
25 why don't we start with Exhibit 11 which is the

1 Monticciolo

2 September 25, 2018 Callahan affidavit and
3 confirm for me that is one of the two
4 affidavits you were referring to earlier?

5 A. (Witness reviewing documents).
6 Okay.

7 Q. Is this one of the two affidavits
8 you were referring to in your testimony
9 earlier?

10 A. Yes.

11 Q. And can you tell me, is there a
12 particular portion of this affidavit that you
13 had in mind when you were talking about the
14 description of what Mr. Callahan had uncovered
15 during his periodic review in May of 2016?

16 A. It is a good portion. We could go
17 through it. I'll cite by paragraph.

18 Q. Okay.

19 A. Paragraph 10.

20 Q. Okay?

21 A. Paragraph 11, 12, 15, 16, and the
22 relevance of 18.

23 Q. What did you say before 18?

24 A. And 18.

25 Q. Okay.

1 Monticciolo

2 A. 19, 20, 21, 23 and 24.

3 Q. Anything else?

4 A. I'm working on it. Twenty-nine.

5 Q. I want to make sure we are talking
6 about the same thing as you're going along,
7 Mr. Monticciolo. You're telling me the things
8 that you were referring to earlier as to what
9 Mr. Callahan had discovered in May of 2016,
10 right?

11 A. Clarification on that then, so
12 probably not 28 then.

13 Q. Okay.

14 A. The dates on the rest of these
15 items, but I assume they are throughout the
16 whole time period.

17 Q. So I have 23, 24. Did you want 29
18 in there?

19 A. No.

20 Q. Okay. Anything else?

21 A. I think that's sufficient for this
22 quick review.

23 Q. Take your time.

24 A. Okay then. I think 30. I think
25 that's good.

1 Monticciolo

2 Q. Let's go back to 10. I see there a
3 description of documents that Mr. Iacovacci
4 e-mailed to himself. Do you see that?

5 A. Where are you looking?

6 Q. I'm looking at the first paragraph
7 you identified, paragraph 10.

8 A. That starts with "Iacovacci,
9 however, breached his obligations under the LLC
10 Agreements?"

11 Q. Yes.

12 A. Yes.

13 Q. These are the lists of documents
14 that Mr. Callahan discovered in May 2016
15 Mr. Iacovacci was e-mailing to himself,
16 correct? I'm looking at the description in the
17 parenthetical. Do you see that?

18 A. The parenthetical?

19 Q. At the end of the list you'll see
20 reference to Exhibit A, "Examples of Plaintiff
21 e-mailing confidential Brevet documents to
22 himself." Do you see that?

23 MR. SOLOMON: Object to the
24 question.

25 A. Yes, could the court reporter just

1 Monticciolo

2 repeat the question.

3 (Whereupon the record was read back
4 by the reporter.)

5 A. Answer, yes I see that.

6 Q. So the list here in paragraph 10,
7 Exhibit 11 is a list of documents that
8 Mr. Callahan had discovered in May 2016 that
9 Mr. Iacovacci was e-mailing to himself,
10 correct?

11 A. I don't know if this was that exact
12 list back in 2016.

13 Q. Oh, you don't know whether this is
14 the list?

15 A. No, I missed your qualification of
16 2016 when looking at this.

17 Q. Oh, that's okay. I asked you
18 previously to tell me what it is that
19 Mr. Callahan had discovered in May 2016 and you
20 had directed me, among other things, in terms
21 of what you gave me whatever answers you could
22 and then you directed me to two affidavits and
23 we are looking at the first of those two and I
24 think the first one you mentioned was this one,
25 so that's why I presented this to you.

1 Monticciolo

2 Do you not know whether the
3 materials listed in paragraph 10 here were
4 indeed discovered in May 2016 as having been
5 e-mails by Mr. Iacovacci to himself?

6 A. I do not know.

7 Q. So let's then back off and go back
8 to the question I had asked you. Can you tell
9 me what Mr. Callahan had presented to you or
10 discovered in May 2016 that you found to be
11 very suspicious and concerning and whatever
12 other adjectives you used to describe it?

13 A. Sure, if I remember in early 2000 --
14 in early May it was that he found a few e-mails
15 that were concerning and that it should be
16 pursued further.

17 Q. Oh, he found only a few in May 2016?

18 A. At the beginning of May, yeah. I'm
19 sorry if I wasn't clear on that. I believe as
20 it went on is when it really became clear that
21 it was one of just a few.

22 Q. Did you have an opportunity to speak
23 with your counsel during the break about this
24 deposition?

25 A. No.

1 Monticciolo

2 Q. You didn't speak with your counsel
3 during the break about this deposition at all?

4 A. Other than when we were going back
5 in and I was using the restroom.

6 Q. Yeah, other than that.

7 A. No.

8 Q. It's your testimony now,
9 Mr. Monticciolo, that in May 2016, only a few
10 documents were discovered that Mr. Iacovacci
11 had e-mailed to himself during the periodic
12 review that Mr. Callahan had conducted?

13 MR. SOLOMON: I object to the
14 question.

15 A. That's not what I said. I said in
16 early May when Mark first brought it up, you
17 asked, it was a few. In May, yes, I recall
18 that later did find many more, but that was I
19 believe after the process had started with
20 taking a further look.

21 Q. When in May did Mr. Callahan conduct
22 his periodic review?

23 A. I don't have the specific date in
24 front of me.

25 Q. Well, did you do anything to

1 Monticciolo

2 determine that in preparation for this 30(b)(6)
3 deposition?

4 A. I didn't think that that would be a
5 material point.

6 Q. So, no, you didn't?

7 A. Not specifically for that item.

8 Q. But you know --

9 A. I'm sorry, I don't recall the
10 specific date.

11 Q. And just for reference for this
12 question and for others, if I ask you about a
13 specific date and you don't know, I would ask
14 for your best, you know, best recollection or
15 even if it requires a range, your best
16 recollection of what the date is.

17 So if you don't know the particular
18 date, can you give me a best recollection as to
19 when Mr. Callahan performed the periodic review
20 in May 2016?

21 MR. SOLOMON: Object to the
22 question.

23 A. I recall early May. I don't have a
24 specific date. Previously you had not asked a
25 specific date in May.

1 Monticciolo

2 Q. Okay, that's probably true. You
3 recall that after Mr. Callahan had reported his
4 findings to you, he then continued to look for
5 additional e-mails or instances of what he had
6 found and the numbers increased; is that a fair
7 description of what you were trying to say?

8 A. I don't have specific knowledge if
9 it was before or after bringing in outside
10 counsel, but it did include -- yes, after
11 initial May dates.

12 Q. By the end of May there were
13 hundreds or thousands of instances that you
14 had, that you, meaning Brevet, had discovered
15 of these improper forwarding confidential
16 information from Mr. Iacovacci's Brevet e-mail
17 address to his home e-mail address?

18 MR. SOLOMON: Object to the
19 question.

20 A. Can you repeat the question?

21 Q. And by the end of May there were
22 hundreds or thousands of instances of
23 Mr. Iacovacci sending Brevet proprietary or
24 confidential information or trade secrets
25 outside of Brevet; is that right?

1 Monticciolo

2 MR. SOLOMON: I object to the
3 question.

4 A. To the best of my understanding,
5 yes.

6 Q. When did Brevet make the decision to
7 retain outside counsel to assist in reviewing
8 the Mr. Iacovacci situation?

9 A. As I recall, that was in May.

10 Q. And that's Greenberg Traurig?

11 A. I believe so.

12 Q. What were their charge -- did you
13 ask them to conduct an independent
14 investigation?

15 A. I wasn't the one who engaged them.

16 Q. Who did?

17 A. I believe it was Mr. Callahan or the
18 compliance department.

19 Q. You don't know which one?

20 A. I did not review that engagement
21 letter.

22 Q. Do you know who signed the
23 engagement letter?

24 A. I do not.

25 Q. Do you know what the engagement

1 Monticciolo

2 letter identifies as Greenberg Traurig's, as
3 the scope of the Greenberg Traurig engagement
4 with respect to this investigation?

5 A. I do not.

6 Q. I take it you did not do anything to
7 prepare to respond to those questions in
8 preparation for this deposition?

9 A. Right. I believe those were already
10 discussed in prior depositions and I said I
11 think given the recommendations and the process
12 we pursued was not necessary.

13 Q. Was Greenberg Traurig hired to
14 determine whether or not Brevet had grounds to
15 terminate Mr. Iacovacci's employment?

16 A. I don't know.

17 Q. How was Greenberg Traurig selected?

18 A. I don't know. I would have to look
19 at your process.

20 Q. Who would know the answers to these
21 questions that I am asking?

22 A. Mr. Callahan and our compliance.

23 MR. CYRULNIK: Well, we are going to
24 have to, Lou, obviously reserve rights on
25 these questions. We think these are

1 Monticciolo

2 covered by the scope of the 30(b)(6) topic
3 and it sounds like Mr. Monticciolo did not
4 have an opportunity or at least the
5 understanding that he should have the
6 answers to those questions for us.

7 MR. SOLOMON: We obviously don't
8 agree that they were covered as he did his
9 homework with respect to the topics that
10 were covered.

11 Q. Has the engagement letter with
12 Greenberg Traurig been produced?

13 MR. SOLOMON: Jason, Ms. da Silva
14 Vint has entered the room.

15 MR. CYRULNIK: Thank you, Lou. Do
16 you mean she has entered the physical
17 room?

18 MR. SOLOMON: Yes, you mean the
19 room? She just entered the deposition
20 room. She is now in the room. I'm sorry
21 she was in the Zoom room. Now she is in
22 the physical room.

23 MR. CYRULNIK: That was my question.
24 I'm looking forward to meeting you Ms. da
25 Silva Vint, but go ahead.

1 Monticciolo

2 MR. SOLOMON: So am I.

3 MR. CYRULNIK: You never met Ms. da
4 Silva Vint?

5 MR. SOLOMON: I'm looking forward to
6 you meeting her.

7 A. Could the court reporter repeat the
8 question?

9 Q. The question was, do you know
10 whether the engagement letter with Greenberg
11 Traurig was produced?

12 A. I don't recall. I didn't think that
13 would be something I would need to prepare for
14 this. That would be the questions I have.

15 Q. Have you ever seen the engagement
16 letter with Greenberg Traurig?

17 A. I'm sure I have in review of this
18 lengthy process, but I don't recall.

19 Q. Well, I would ask you to -- after
20 this deposition, to please see to it that --
21 either confirm that it was produced and tell us
22 what it is or else if you could arrange with
23 Mr. Solomon who is going to have his own
24 thoughts on the request, but arrange with
25 Mr. Solomon to have that produced promptly.

1 Monticciolo

2 MR. SOLOMON: We will consider it.

3 Q. Over what time period did Greenberg
4 Traurig conduct the investigation?

5 A. I don't know. I wasn't directly
6 involved in it, but I know the conclusion was
7 before the early October meeting.

8 Q. So you know it started in May. It
9 ended before the October meeting, but you don't
10 know whether it was a one month investigation,
11 two month investigation, three month
12 investigation, fair?

13 A. Fair.

14 Q. Did they interview witnesses?

15 A. I do not know.

16 Q. Did they interview you?

17 A. I do not recall.

18 Q. Did they produce a report of their
19 findings either formal or informal?

20 A. I don't know.

21 Q. Sitting here today, you don't know
22 whether there was a report of their findings?

23 A. I am not sure if there was a report
24 or verbal communication of their findings. I
25 know it was support for the recommendation from

1 Monticciolo

2 the team in early October.

3 Q. Did Brevet rely on Greenberg
4 Traurig's investigation or recommendation in
5 making the decision to terminate
6 Mr. Iacovacci's employment?

7 A. Not solely.

8 Q. I'm sorry?

9 A. Not solely, no.

10 Q. Not solely you said?

11 A. Correct.

12 Q. I appreciate that. Once again, I'll
13 clarify that unless I say solely, I'm not
14 asking you to limit your answers to my version
15 of the question with the word solely inserted
16 in it.

17 Did Brevet rely on Greenberg's
18 Traurig's investigations, either its finding or
19 its recommendations, in deciding to terminate
20 Mr. Iacovacci's employment?

21 A. Yes.

22 Q. Can you summarize for me
23 specifically what Greenberg -- withdrawn.

24 Can you summarize for me the results
25 of either the written or unwritten findings

1 Monticciolo

2 that Greenberg Traurig made in connection with
3 its investigation?

4 MR. SOLOMON: I'm going to instruct
5 the witness not to disclose the substance
6 of any advice that Greenberg or counsel
7 made in connection with this.

8 Q. Let me make sure I'm understanding
9 the state of play here. Mr. Monticciolo,
10 Greenberg Traurig was doing a factual
11 investigation into what had transpired in
12 connection with the potential misappropriation
13 of trade secrets or other Brevet confidential
14 documents by Mr. Iacovacci; is that right?

15 MR. SOLOMON: Who are you asking
16 that question of, of the witness?

17 MR. CYRULNIK: Yes, almost all of my
18 questions are to the witness.

19 A. Not as a 30(b)(6)?

20 Q. No, you're a 30(b)(6)
21 representative.

22 A. Okay. So could you repeat the
23 question?

24 Q. Yes. Greenberg Traurig conducted an
25 investigation into the facts surrounding the

1 Monticciolo

2 alleged misappropriation of confidential
3 information or trade secrets by Mr. Iacovacci,
4 right?

5 MR. SOLOMON: Object to the
6 question.

7 A. I'm sorry, could you repeat it one
8 more time?

9 Q. Greenberg Traurig conducted an
10 investigation into the factual events related
11 to the alleged misappropriation of confidential
12 information or trade secrets by Mr. Iacovacci,
13 correct?

14 MR. SOLOMON: I object.

15 A. I'm not going to comment on
16 Greenberg's results.

17 Q. You're refusing to tell me whether
18 Greenberg Traurig looked at the facts
19 surrounding the suspicions that you identified
20 earlier that Brevet had with respect to
21 Mr. Iacovacci's alleged misappropriations of
22 trade secrets or confidential information?

23 A. Our team made a decision and
24 recommendation based on a variety of
25 information. If there was information provided

1 Monticciolo

2 by our counsel in their privilege, then that is
3 something I would say went into their decision.

4 Q. Well, the problem is that is an
5 unclear answer. You said if there was
6 information that was provided it would have
7 gone to their decision and I want to know
8 whether there was information provided that
9 went to their decision?

10 A. That was a recommendation. The
11 recommendation is based on, as I previously
12 stated, with the input of outside counsel and
13 other members of Brevet.

14 Q. I want to understand the factual
15 component of the Greenberg Traurig
16 investigation separate and apart from any legal
17 advice that they may or may not have been
18 provided with respect to Brevet's rights or
19 Ms. Iacovacci's rights or obligations, et
20 cetera.

21 With respect to the factual piece,
22 was Greenberg Traurig charged with
23 investigating what Mr. Iacovacci did?

24 MR. SOLOMON: I object to the
25 question.

1 Monticciolo

2 A. That's a very vague question. Could
3 you be a little more precise?

4 Q. I could try. I don't think it's
5 particularly vague, but I want to know whether
6 Greenberg Traurig was tasked with putting
7 together an assessment or summary of what
8 Mr. Iacovacci did in connection with the
9 allegations that he misappropriated
10 confidential information or trade secrets?

11 A. As I stated previously, they were
12 involved to help us confirm the initial, based
13 on the initial findings of Mr. Callahan,
14 exactly how they did that, what they did is,
15 you know, their work product.

16 Q. I think your counsel would advise
17 you with respect to the application of the
18 privilege, but I'm trying to understand the
19 facts of what they did before I get to the
20 actual findings. They, for example, were given
21 access to Mr. Iacovacci's e-mails. They were
22 able to look into what he was forwarding to
23 himself or outside of Brevet or any of that,
24 correct?

25 A. Again, I'm not the one who would be

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Monticciolo

specifically involved in doing that nor was that something that I thought would be relevant to the questions that I was asked as a 30(b)(6).

Q. We all make mistakes. So you don't know?

MR. SOLOMON: I object to your comments.

MR. CYRULNIK: Well, I mean, Lou, to be fair this is clearly directly related to Topic 26A and B and the witness has told me two or three times that he just didn't look into this stuff. So I'm not taking him to task for it, but it clearly is a problem that we need to address.

MR. SOLOMON: I appreciate that is your view. You can use the word clear as many times as you want. It's absolutely clear to me that questions you are asking now have nothing to do with this topic. I think we came prepared to give you the company's position with respect to each of these topics.

Q. Mr. Monticciolo, let me ask you a

1 Monticciolo

2 question. Did Greenberg Traurig's
3 investigation relate to plaintiff's termination
4 from Brevet?

5 A. Say that one more time.

6 Q. Did Greenberg Traurig's
7 investigation relate to plaintiff's,
8 Mr. Iacovacci's termination from Brevet?

9 A. Yes.

10 Q. Did Greenberg Traurig's
11 investigation relate to the reasons underlying
12 Brevet's decision to terminate Mr. Iacovacci?

13 A. Explain what you mean by reasons.

14 Q. What do you understand reasons to
15 be?

16 A. I'm not the one asking the
17 questions. Reasons? Like --

18 Q. Let me ask you this,
19 Mr. Monticciolo. Brevet had reasons for
20 terminating Mr. Iacovacci's employment, right?

21 A. Had causes.

22 Q. Did it have reasons for terminating
23 it?

24 A. I think causes, breaches and reasons
25 are different things.

1 Monticciolo

2 Q. Would you say Mr. Iacovacci's
3 breaches of various obligations were one or
4 more of the reasons why Brevet terminated his
5 employment?

6 A. Yes.

7 Q. I'm just trying to confirm, because
8 I don't have that much clarity on this
9 Greenberg Traurig investigation. I take it
10 that Greenberg Traurig's investigation and the
11 findings therefrom and the recommendations they
12 made, one or all of those things were related
13 to the reasons why plaintiff proceeded to
14 terminate Mr. Iacovacci's employment from
15 Brevet Holdings?

16 MR. SOLOMON: Object to the
17 question.

18 Q. Is that a fair high level summary?

19 A. Do you want to repeat the question?

20 Q. Sure.

21 MR. CYRULNIK: Can the court
22 reporter please read back my question.

23 (Whereupon the record was read back
24 by the reporter.)

25 A. No, it doesn't agree with the word

1 Monticciolo

2 recommendations.

3 Q. If you take the word recommendations
4 out, is it a fair summary?

5 MR. SOLOMON: I object to the
6 question.

7 A. Repeat the question.

8 Q. The question is whether Greenberg
9 Traurig's investigation or findings constituted
10 one or more of the reasons why Brevet proceeded
11 to terminate Mr. Iacovacci's employment from
12 Brevet Holdings?

13 MR. SOLOMON: I will object to the
14 question.

15 A. I wouldn't characterize it as
16 constituting a reason. It was support and
17 findings.

18 Q. Support for the termination
19 decision?

20 MR. SOLOMON: No, I'm not going to
21 let him testify to the substance of the
22 legal advice.

23 Q. I didn't ask him about the substance
24 of it.

25 MR. SOLOMON: You said support.

1 Monticciolo

2 MR. CYRULNIK: He said support.

3 MR. SOLOMON: By the way, before you
4 were so quick to say I didn't object in a
5 timely way. I don't want him getting into
6 the substance of any advice that Greenberg
7 Traurig made.

8 MR. CYRULNIK: First of all, I don't
9 think I ever criticized you for not
10 objecting in a timely way. If I did, you
11 can show it to me, but not that it's
12 impossible. I just don't remember doing
13 it.

14 More importantly, I literally just
15 rephrased what he said. I believe he said
16 support, not I. I shouldn't say not I.
17 He said support and then I was clarifying
18 it in my follow-up question, so I'm not
19 quite sure for the basis of the objection,
20 but I think the question on the table is
21 were Greenberg Traurig's investigation
22 findings, did they provide support in the
23 witness' view or in the company's view for
24 its decision to terminate Mr. Iacovacci's
25 employment?

1 Monticciolo

2 MR. SOLOMON: I'm going to instruct
3 you not to disclose the substance of any
4 legal advice that Greenberg Traurig made.

5 Q. Setting aside legal advice,
6 Mr. Monticciolo, did Greenberg Traurig's
7 factual findings or analysis in your view
8 support Brevet's decision to terminate
9 Mr. Iacovacci's employment?

10 MR. SOLOMON: Object to the
11 question. Assumes a fact not in evidence.

12 A. Yeah, I can't comment one way or
13 another on that.

14 Q. Why is that?

15 A. Because I wasn't the person involved
16 in receiving it.

17 Q. So sitting here today as Brevet's
18 corporate representative, you don't know
19 whether Greenberg Traurig's investigation
20 supported plaintiff's decision to terminate
21 Mr. Iacovacci's employment?

22 MR. SOLOMON: I object to the
23 question and I reiterate my instruction.

24 A. That is not what I am saying.

25 Q. Well, I think I just gave you two

1 Monticciolo

2 literally polarized spectrums. One of them has
3 to be true. Why don't you tell me what you are
4 trying to say?

5 MR. SOLOMON: Object to the
6 question.

7 A. I think I was clear.

8 Q. I can assure you you weren't clear.
9 Mr. Monticciolo, I want to know whether or not
10 Greenberg Traurig's factual findings or factual
11 analysis as provided to Brevet supported
12 Brevet's decision to terminate Mr. Iacovacci's
13 employment in your view?

14 MR. SOLOMON: Same objection. Same
15 instruction.

16 A. I have to say no, I wasn't directly
17 involved in that, no.

18 Q. No, as in you don't know because you
19 weren't directly involved in it or no as in no,
20 it didn't support it?

21 A. No, as I was not directly involved.

22 Q. So this is again one of those things
23 where you don't know the answer because this is
24 not something that you understood you needed to
25 get up to speed on it in order to testify on

1 Monticciolo

2 Topic 26; is that fair?

3 A. It seems pretty clear to be
4 consistent with question 26 which is where we
5 are.

6 Q. Sorry, what did you say?

7 A. I prepared for question 26. I
8 didn't think that would be a reasonable thing
9 to practice I thought.

10 Q. Your counsel and I will hopefully
11 reach an agreement on how to address that, but
12 I appreciate the clarity on at least that
13 topic.

14 Did you ever review Greenberg
15 Traurig's recommendations or findings whether
16 they were in writing or communicated orally
17 prior to your decision to approve the
18 recommendation made by Mr. Callahan to
19 terminate Mr. Iacovacci's employment from
20 Brevet Holdings?

21 MR. SOLOMON: Object to the form.

22 A. We've already answered this
23 question.

24 Q. Okay, well what is the answer? No?

25 A. Are you telling me it's no?

1 Monticciolo

2 Q. I'm sorry?

3 A. Are you telling me it's no?

4 Q. No, I'm trying to ask you what the
5 answer is. Is it yes or is it no or I don't
6 know?

7 A. Would you repeat the question one
8 more time?

9 Q. The question, Mr. Monticciolo, was
10 whether you reviewed the findings or
11 recommendations from Greenberg Traurig, whether
12 they were written or oral prior to your
13 agreeing with or accepting Mr. Callahan's
14 recommendation to terminate Mr. Iacovacci from
15 Brevet Holdings?

16 A. No, not to the best of my
17 recollection.

18 Q. Why not?

19 A. Because it seems that Mr. Callahan
20 and others were presenting a recommendation.

21 Q. Wasn't it important for you to know
22 what Greenberg Traurig's view was?

23 A. It is important that I have a team
24 that can be trusted to follow rigor and process
25 and I trust them in doing their jobs.

1 Monticciolo

2 Q. Well, Mr. Monticciolo, the buck
3 stops with you, right? You're the CEO of
4 Brevet Holdings, right?

5 MR. SOLOMON: I object to the
6 question.

7 A. I would not say that. There is a
8 process for virtually everything.

9 Q. Well, if there is a process,
10 Mr. Monticciolo, why is it that you had to
11 approve the recommendation of all of the other
12 departments that you mentioned to terminate
13 Mr. Iacovacci? If you said no, what would have
14 happened?

15 A. A number of things.

16 Q. Care to share?

17 A. I don't want to hypothesize.

18 Q. You may not want to hypothesize, but
19 my question is what would have happen if you
20 did not accept their recommendation?

21 A. We could sit here for hours going
22 through the hypothetical next steps if I
23 denied.

24 Q. I prefer not to sit here for hours.
25 I just prefer to get an answer to my question.

1 Monticciolo

2 If you had not accepted the recommendation that
3 Mr. Callahan had made on behalf of whomever he
4 was making it to terminate Mr. Iacovacci's
5 employment, what would have happened?

6 A. I'm not going to -- I can conjecture
7 as to exactly what would have happened.

8 Q. How about generally without the word
9 exactly in there?

10 A. Generally I'm not going to
11 conjecture.

12 Q. Well, that's unfortunate.
13 Mr. Monticciolo, did you have an understanding
14 that absent your acceptance of the
15 recommendation, Mr. Iacovacci's employment was
16 not going to be terminated; yes or no?

17 A. No.

18 Q. So you -- was it your understanding
19 that regardless of what you thought once
20 Mr. Callahan communicated the recommendation to
21 terminate Mr. Iacovacci's employment, the
22 decision was made and that action was going to
23 be undertaken one way or the other regardless
24 of your view?

25 A. That's not what I said, no.

1 Monticciolo

2 Q. Well then you're going to need to
3 help me understand what the middle ground there
4 is. What was your role in the termination of
5 Mr. Iacovacci after you received the
6 recommendation from Mr. Callahan?

7 A. Approved based on verification and
8 review and deny if I think it didn't rise to
9 doing the best practices.

10 Q. You understood that you had the
11 ability to deny the recommendation and that
12 Mr. Iacovacci would not have been fired, right?

13 MR. SOLOMON: Asked and answered.

14 A. That is -- I didn't say that. I
15 said no. I can deny it.

16 Q. Mr. Monticciolo, when I ask you a
17 question, I'm not really asking you whether you
18 said it or not. Generally speaking, if you
19 said it already, I'm probably not asking you
20 that question anyway or at least I didn't
21 understand you had said it. So rather than
22 quibble with whether you said it or didn't
23 answer it, if you could just please try and
24 focus on the question.

25 I want to understand your view. Did

1 Monticciolo

2 you have an understanding in 2016 that you had
3 the ability to approve or deny the
4 recommendation by Mr. Callahan to terminate
5 Mr. Iacovacci's employment from Brevet
6 Holdings?

7 MR. SOLOMON: Object to the
8 question. Asked and answered.

9 A. I'm sorry, repeat the question.

10 Q. Did you have an understanding in
11 2016 that you had the ability to accept or deny
12 Mr. Callahan's recommendation to terminate
13 Mr. Iacovacci's employment with Brevet
14 Holdings?

15 A. Yes.

16 Q. Did you have an understanding that
17 if you were to accept the recommendation that
18 Mr. Iacovacci would then be fired?

19 A. Yes.

20 Q. Did you have an understanding if you
21 were to reject or deny the recommendation that
22 Mr. Iacovacci was not then going to be fired?

23 A. No.

24 Q. So why is it that you are being
25 presented with the opportunity -- withdrawn.

1 Monticciolo

2 What did you understand it to mean
3 if you rejected or denied the recommendation to
4 fire Mr. Iacovacci?

5 A. What I understood that maybe the
6 recommendation didn't rise to either acceptance
7 or denial and maybe if there was a denial,
8 maybe it needed to have further support and
9 come back for a new recommendation.

10 Q. Okay, but in order for the
11 recommendation to fire Mr. Iacovacci to be
12 acted on, you understood that one way or
13 another you, Doug Monticciolo, would need to
14 accept such a recommendation; is that fair?

15 A. I would need to not deny the
16 recommendation.

17 Q. You would need to not deny it?

18 A. As I previously stated. It's we
19 accept the recommendation as stated, which is
20 either it's a non-denial or a denial.

21 Q. So the two options are you don't
22 deny or you deny?

23 A. Right.

24 Q. If you don't deny, then it's acted
25 on, right?

1 Monticciolo

2 A. Yes.

3 Q. And if you deny it, then it is not
4 acted on and they can either abandon the whole
5 thing or come back to you with a revised
6 recommendation or an updated recommendation or
7 whatever it is for you to again either non-deny
8 or deny, right?

9 A. That's a possibility.

10 Q. In order for you to decide whether
11 or not you should deny the recommendation, you
12 did not feel it was important for you to review
13 Greenberg Traurig's findings or recommendations
14 directly; is that right?

15 A. It is not my job to second guess the
16 professionals in the firm.

17 Q. Well, isn't second guessing the
18 professionals in the firm the whole purpose of
19 the deny or non-deny procedure you just
20 described?

21 MR. SOLOMON: Object to the
22 question.

23 A. Second guessing would be
24 mischaracterizing of what that process is. It
25 is confirming whether or not the firm believed

1 Monticciolo

2 what to be best practices, not second guessing.

3 Q. Well, if you denied the
4 recommendation and they made the
5 recommendation, you wouldn't characterize that
6 as you second guessing what they were
7 recommending?

8 A. Absolutely not.

9 Q. Why didn't you sign the termination
10 letter that was sent to Mr. Iacovacci?

11 MR. SOLOMON: Object to the
12 question.

13 A. I don't know. That is not my job.

14 Q. Whose job is it to fire a partner?

15 A. It's -- if it's related to LLC, it's
16 one of the partners which would be in this case
17 either I believe Mark Callahan, maybe John
18 Tripp, but probably Mark Callahan.

19 THE COURT REPORTER: I'm sorry, what
20 was the second name?

21 A. Mark Callahan or John Tripp with two
22 Ps.

23 Q. What is the basis for your assertion
24 that it is their job to sign termination
25 letters?

1 Monticciolo

2 A. At the LLC you need to be one of the
3 partners. I recall the specifics need to be
4 one of the -- there is a name for it, but one
5 of the managing partners that's why I corrected
6 and said Mark Callahan and at the company it's
7 just wherever corporate policies legislate.

8 Q. You never signed termination
9 letters, right?

10 A. Not to the best of my knowledge.

11 Q. You typically ask other people to
12 sign things instead of you to minimize
13 accountability?

14 A. I never asked somebody to sign
15 something on behalf of me. It's not corporate
16 policy. There are authorities that are in
17 place to make sure the appropriate people and
18 the appropriate policies -- the appropriate
19 signatures are on documents.

20 Q. Signature of the CEO of Brevet
21 Holdings would not be an appropriate signature
22 on a termination letter for someone who has
23 been with the company for as long as Paul
24 Iacovacci was?

25 A. Again, you're trying to make it

1 Monticciolo

2 something other than just a process. It's a
3 corporate process.

4 Q. Can I get the answer to my question?

5 A. I think your question wasn't
6 relevant.

7 Q. I appreciate that. We've gone
8 through this before. Your view on the
9 relevance of my questions is really not going
10 to dictate how this deposition goes. That's
11 for the court to decide.

12 A. True.

13 Q. Can you answer my question, please?

14 A. Can you have the court reporter
15 repeat it?

16 Q. We can.

17 A. I can't remember what the question
18 was.

19 (Whereupon the record was read back
20 by the reporter.)

21 A. The answer is correct, it is not the
22 length of time that legislates who signs a
23 letter.

24 Q. Prior to Mr. Callahan engaging in
25 the May 2016 review of Mr. Iacovacci's e-mails,

1 Monticciolo

2 were you involved in any discussions whatsoever
3 with anybody regarding the desire to
4 investigate whether the company had grounds for
5 terminating Mr. Iacovacci from his employment
6 or from his partnership?

7 A. I don't believe so.

8 Q. You believe so you said?

9 A. I do not believe so.

10 Q. You don't believe so?

11 A. Right.

12 Q. You didn't ask Mr. Callahan to look
13 through Mr. Iacovacci's e-mails or see whether
14 or not the company had any grounds to proceed
15 with the termination rather than a negotiated
16 retirement?

17 A. I answered this question before.
18 Unequivocally absolutely not.

19 Q. It's just coincidence that in
20 May 2016 the thick of the negotiations for the
21 terms of the separation agreement that you had
22 been negotiating with Mr. Iacovacci,
23 Mr. Callahan engaged in a periodic review of
24 Mr. Iacovacci's e-mails and identified grounds
25 for potential termination; is that your

1 Monticciolo

2 testimony?

3 MR. SOLOMON: I object to the
4 question.

5 A. I don't believe that's my testimony.
6 I never said it was grounds for his
7 termination.

8 Q. What Mr. Callahan found during that
9 periodic review did not constitute grounds for
10 Mr. Iacovacci's termination?

11 MR. SOLOMON: I object to the
12 question. Asked and answered.

13 A. I believe I've answered this as
14 concerns. I didn't jump to conclusions.

15 Q. Did you ever give Mr. Iacovacci
16 notice that you were concerned about things
17 that you had found and that you were
18 considering -- and/or you were considering
19 terminating him prior to sending him the
20 termination letter of October of 2016?

21 A. I don't know the answer to that. I
22 don't believe so.

23 Q. You're a 30(b)(6) witness on behalf
24 of Brevet in connection with Topic 26. You
25 don't know whether or not you provided notice

1 Monticciolo

2 to Mr. Iacovacci of his prospective termination
3 or the concerns you had that led to it?

4 A. I don't think either one of those
5 rose to the occasion until October.

6 Q. Can you explain what you mean with
7 your last answer? I didn't follow that.

8 A. I don't think we -- I don't think
9 there was a concern of either of those things
10 until we were sure there was a concern.

11 Q. So in May you learned that
12 Mr. Iacovacci is sending things outside of
13 Brevet, confidential information trade secrets,
14 but you have no concern about potentially
15 needing to terminate his employment; is that
16 your testimony?

17 MR. SOLOMON: Objection. Misstates
18 the testimony.

19 A. I didn't say that. I said we just
20 had concerns that needed to be looked into
21 further.

22 Q. And I'm asking whether you ever
23 provided Mr. Iacovacci notice of your concerns
24 prior to terminating his employment in
25 October 2016?

1 Monticciolo

2 MR. SOLOMON: Asked and answered.

3 A. Again, we don't knee jerk things.
4 We don't do things off of potential conjecture
5 especially of this magnitude without being
6 sure. Why would we?

7 Q. Again, I'm going to keep on asking
8 the question until I get an answer to my
9 question.

10 My question is, did you ever provide
11 notice to Mr. Iacovacci, whether it was in May
12 or June or July or August or September or the
13 beginning of October, that you had concerns
14 about things that you thought he was doing or
15 that you were considering terminating his
16 employment?

17 MR. SOLOMON: I object to the
18 question. Asked and answered.

19 A. I answered this question. I don't
20 think we had any clear view until early October
21 and you know the decision or recommendation was
22 followed at that point.

23 Q. When did you finally have a clear
24 view on whether Mr. Iacovacci had engaged in
25 misconduct?

1 Monticciolo

2 MR. SOLOMON: I object to the
3 question. Asked and answered.

4 A. Again, this is -- I answered this
5 already. This was early October when the
6 recommendation was made.

7 Q. Until Mr. Callahan made his
8 recommendation or the recommendation you made
9 on behalf of those other entities to you, you
10 didn't have a clear view; is that a fair
11 summary of what your position is?

12 A. Correct.

13 Q. Okay. Well, when Mr. Callahan made
14 the recommendation to you in early October, did
15 you contact Mr. Iacovacci immediately and
16 provide him notice of the concerns that you had
17 or the prospective termination that you were
18 going to be acting on?

19 A. I don't believe we did contact him
20 and I believe that the recommendation was that
21 this was beyond a simple resolution.

22 Q. When you say the recommendation was
23 I am hearing more passive voices. Whose
24 recommendation was it that this was beyond a
25 and I'm forgetting your words anyway, but who

1 Monticciolo

2 were you referring to?

3 A. Again, we answered this question.
4 The recommendation was spokesperson Mark
5 Callahan to terminate Paul.

6 Q. I see. So when Mr. Callahan made
7 the recommendation to terminate Paul, it was
8 accompanied by a recommendation not to tell
9 him, not to tell Paul, not to give Paul any
10 notice?

11 A. I didn't say that. I don't believe
12 there was, you know, any discussion on that
13 specific point. Again, that would be handled
14 by either HR or compliance.

15 Q. Paul was your partner for how many
16 years at that point in time, Mr. Monticciolo?

17 A. What was that again?

18 Q. Paul was your partner for how many
19 years at that point in time?

20 A. I don't know. Just a few. I mean
21 he was in -- the company is 23 years old.
22 Maybe 10, 15, maybe at that point. Not even.
23 Maybe 10 plus, half the life of the firm.

24 Q. Ten plus years your partner. This
25 is the first time you were terminating a

1 Monticciolo

2 partner?

3 A. You know, if there is a situation
4 where there is potentially a regulatory
5 violation, courtesies and you know time periods
6 really don't matter.

7 Q. Mr. Monticciolo, I think it will be
8 useful, instead of trying to anticipate my next
9 question, you just focus on the question I'm
10 asking, okay. I don't mean to say that with
11 any level of disrespect. I'm just concerned
12 with your time and candidly my time and
13 Mr. Solomon's ongoing expressed concerns about
14 timing.

15 The question I asked you was,
16 Mr. Iacovacci was a partner of yours for 10
17 plus years by the point in time that you
18 decided to terminate him, correct?

19 A. Yes.

20 Q. And you had never terminated a
21 partner before, right?

22 A. No.

23 Q. And you didn't feel that it was
24 appropriate to provide Mr. Iacovacci any notice
25 about the concerns that led to his termination

1 Monticciolo

2 or about the plan to act on the termination
3 recommendation prior to sending him the letter
4 terminating his employment on October 14th of
5 2016, right?

6 A. This is a business. My feelings
7 don't come into business decisions particularly
8 when it's of a regulatory nature.

9 Q. Mr. Monticciolo, didn't you just
10 testify for 25, 30 minutes earlier today that
11 your feelings about how long Mr. Iacovacci had
12 been a partner of yours contributed to the
13 desire to act very, very carefully and no knee
14 jerk reactions and look into everything with
15 investigations and months and months; do you
16 remember that general testimony?

17 MR. SOLOMON: I object to the
18 question.

19 A. I would say misstatement of what I
20 said. I never said because he had been a
21 partner for 10 years. He's a partner. He has
22 regulatory responsibility, of a responsibility
23 he is well aware of. That is the only reason
24 why and the fact that it is best practice that
25 we would do that, not that he has been here 10

1 Monticciolo

2 years.

3 Q. Is it your understanding that there
4 is a regulatory requirement that you not
5 provide notice to a partner or employee prior
6 to their termination when the concern driving
7 the termination is regulatory violation
8 related?

9 A. I don't know the answer to that. I
10 wasn't told I need to prepare on the regulatory
11 law.

12 Q. You're not testifying that the
13 reason you didn't provide any notice to
14 Mr. Iacovacci of his impending termination was
15 because there were regulatory violations
16 involved, are you?

17 A. I did not say that.

18 Q. You're welcome to add, but I was
19 asking a yes or no question, but that's fine.
20 Did you understand the LLC agreements to
21 provide that you were supposed to give notice
22 to an employee, to a partner before
23 terminating?

24 A. Not that I'm aware of.

25 Q. Let's take a look at the next

1 Monticciolo

2 exhibit. Exhibit -- we are going to go back to
3 an exhibit that was previously shown. It's the
4 termination letter. Let me know when you have
5 that up, please.

6 MR. SOLOMON: What exhibit number?

7 MR. CYRULNIK: Exhibit 3.

8 MR. SOLOMON: It references Exhibit

9 M.

10 A. Yes, it's on the screen.

11 Q. Is this the termination letter that
12 was sent to Mr. Iacovacci signed by
13 Mr. Callahan that we were referring to
14 previously?

15 A. Yes.

16 Q. Who drafted this termination letter?

17 A. I don't know. I wasn't involved.

18 Q. You didn't research that for
19 purposes of this deposition?

20 A. I did not, no. This was probably
21 work product of counsel.

22 Q. Well, I want to make sure I'm
23 getting this. I thought you just told me you
24 didn't know who drafted it. Now you're telling
25 me it's work product of counsel?

1 Monticciolo

2 MR. SOLOMON: He speculated. You
3 didn't hear his full question.

4 A. I said probably work product of
5 counsel. I will speak up for you.

6 Q. Do you know one way or the other
7 whether this was drafted by counsel?

8 A. I do not.

9 Q. So you didn't research who drafted
10 this letter in preparation for this 30(b)(6)
11 deposition on the subject of Mr. Iacovacci's
12 termination, right?

13 A. From the questions, the topics that
14 I was asked to read, I think that would be a
15 reasonable thing to do. This letter has been
16 produced, right?

17 Q. Sorry?

18 A. This letter has been produced?

19 Q. Yes, the Bates number indicates that
20 it is a production and you'll see it's a Brevet
21 Bates number, so it was produced from Brevet's
22 files.

23 By this point in time October 14,
24 2016, Brevet had finally confirmed whatever it
25 wanted to confirm from its suspicions back in

1 Monticciolo

2 May of 2016, correct?

3 MR. SOLOMON: Object to the
4 question.

5 A. Yes. Can you repeat the question?

6 Q. By this point in time, October 14,
7 2016, Brevet had finally confirmed whatever it
8 wanted to confirm as raised back in May of
9 2016, correct?

10 MR. SOLOMON: Object to the
11 question.

12 A. I wouldn't say finally, but I would
13 say we have drawn that conclusion at or before
14 then.

15 Q. You were drawing conclusions about
16 Mr. Iacovacci sending Brevet confidential
17 materials or trade secrets outside of Brevet,
18 right?

19 A. No. It would be to the point where
20 the firm was willing to or prepared to make a
21 recommendation for his termination as I
22 previously stated.

23 Q. I'm not sure I followed your answer
24 to my question. My question was, by this point
25 in time you had confirmed that Mr. Iacovacci

1 Monticciolo

2 had sent Brevet confidential materials or trade
3 secrets outside of Brevet hundreds or thousands
4 of times, right?

5 A. That would be part of that
6 recommendation.

7 Q. Can you show me where in the
8 termination letter you identified that as the
9 findings that contributed to your decision to
10 terminate Mr. Iacovacci?

11 MR. SOLOMON: I object to the
12 question.

13 A. I'm not a lawyer that can tell you
14 how this termination letter refers to the
15 specifics. There are sections mentioned here.

16 Q. I appreciate that there are sections
17 mentioned here. I'm asking if you can identify
18 anywhere in this letter where it tells
19 Mr. Iacovacci that Brevet had concluded that he
20 had sent hundreds or thousands of iterations of
21 Brevet confidential materials and/or trade
22 secrets outside of Brevet and that those are
23 the grounds -- those are one or more of the
24 grounds for his termination?

25 A. I again point you to the paragraph

1 Monticciolo

2 that says your conduct and I believe that's
3 encapsulated and violated numerous Brevet
4 policies.

5 Q. So you didn't bother to tell
6 Mr. Iacovacci that he had sent Brevet
7 confidential materials outside of Brevet
8 thousands of times and that that was part of
9 the reason you were terminating him, instead
10 resting on the very summary sentence that you
11 identify beginning with the words "your
12 conduct" and ending with the words "trade
13 secrets," right?

14 MR. SOLOMON: Object to the
15 question.

16 A. I don't write the employment
17 letters, but if I read this and I was Paul, I
18 would know what they are talking about.

19 Q. But you're not Paul and I'm asking
20 you a question.

21 A. I think I answered it.

22 Q. I don't think you did, so I'll ask
23 it again. You didn't tell Paul that you had
24 found thousands of iterations of his sending
25 Brevet confidential materials or trade secrets

1 Monticciolo

2 outside of Brevet and if that was one of the
3 grounds for terminating his employment, did
4 you?

5 MR. SOLOMON: Object to the
6 question. Asked and answered.

7 A. I didn't tell Paul anything. There
8 is this letter. It seems pretty clear that to
9 me numerous Brevet policies given the industry
10 that we are in, given his years in the
11 industry, that would be, if not obvious, then
12 you know coming to a conclusion.

13 Q. Let's take a look at Exhibit 13.

14 (Whereupon document was marked
15 Exhibit 13 for identification as of this
16 date.)

17 Q. Do you recognize this document, Mr.
18 Monticciolo?

19 A. It's not up yet.

20 Q. That's why I ask. We have Exhibit
21 13 of Tab 1. Let me pull it up. That's one.

22 A. After we review this document, can
23 we take a restroom break?

24 Q. We can take a break after these
25 questions, yeah, sure.

1 Monticciolo

2 A. This is the Limited Liability
3 Company Agreement.

4 Q. Yes. Do you recognize it?

5 A. Yes.

6 Q. If you scroll down to page 10?

7 A. Document page 10?

8 Q. Internal pagination page 10. It's
9 Article 7, Section 7.1B.

10 A. It starts on page 9?

11 Q. It does, yes. I'm going to
12 specifically direct you to the end of the first
13 full sentence which continues onto page 10.
14 you'll see a little Roman 5 or a V before the
15 words "a Member's material breach." Just tell
16 me when you are ready.

17 A. Okay.

18 Q. Do you see the LLC Agreement
19 provides that a Member can be terminated for
20 cause if, and I'm looking at 5 as I said, "a
21 Member's material breach of any provision of
22 this Agreement and such Member's failure to
23 remedy such breach within ten days after
24 receiving written notice from the Company of
25 the evidence of such breach;" do you see that?

1 Monticciolo

2 A. I do.

3 Q. Did you provide Mr. Iacovacci with
4 written notice of the evidence of a breach and
5 offer him ten days to cure it?

6 A. I didn't research that. I could go
7 look.

8 Q. Well, you're the 30(b)(6) corporate
9 representative on the subject of
10 Mr. Iacovacci's termination. I want to know
11 whether or not you provided Mr. Iacovacci
12 written notice from the company of the evidence
13 of material breach and whether or not you gave
14 him ten days to cure such a breach or remedy
15 such a breach.

16 A. I don't have that in front of me. I
17 think that was something I would need to
18 prepare for this.

19 Q. I'm sorry?

20 A. I didn't think that would be
21 something that I would have to prepare for
22 this. Well, I can check.

23 Q. You didn't think that would be
24 appropriate material for you to get up to speed
25 on prior to offering your testimony as the

1 Monticciolo

2 corporate representative on the subject of
3 Mr. Iacovacci's termination, right?

4 A. I believe I did a reasonable job to
5 prepare for this, yes.

6 Q. Sitting here right now as Brevet's
7 corporate representative, do you know one way
8 or the other whether you either provided
9 written notice from the company of the evidence
10 of material breach that Mr. Iacovacci had
11 engaged in prior to sending him the October 14
12 termination letter or whether you had given him
13 10 days to remedy such a breach?

14 A. Sitting here right now I do not
15 know.

16 Q. Any idea why you would not have
17 given Mr. Iacovacci written notice of a breach
18 and/or an opportunity to remedy such a breach
19 within 10 days?

20 A. I'm not going to conjecture.

21 Q. You're the CEO of the company,
22 right?

23 A. Right.

24 Q. Do you think you should have given
25 Mr. Iacovacci notice of this before sending him

1 Monticciolo

2 the October 14th letter terminating his
3 employment and membership interest?

4 A. I'm not going to conjecture. I'm
5 not a lawyer.

6 Q. I'm not asking you to conjecture.
7 I'm not asking you to give me a legal opinion.
8 I'm asking you for your opinion as the
9 corporate representative of Brevet.

10 Do you think you should have given
11 him notice of this?

12 A. I don't know.

13 Q. Do you think you should have given
14 him an opportunity to remedy a breach within 10
15 days at least?

16 A. If a breach is remediable, that
17 would be -- make sense but a remediable breach,
18 that's a question for the lawyers.

19 Q. Did you have a view one way or the
20 other prior to sending this October 14
21 termination letter that we were just looking at
22 as to whether or not the material breaches that
23 you believed you had uncovered on behalf of
24 Mr. Iacovacci were amenable?

25 A. I believe the recommendation made

1 Monticciolo

2 from the team took into account many
3 considerations and factors and I would expect
4 that our decision would stand as to upon my
5 approval.

6 Q. I don't know if that answered my
7 question. Did you and the team ever discuss
8 the question of whether or not to provide
9 Mr. Iacovacci notice of material breaches that
10 he had engaged in?

11 A. Again, me and the team wouldn't be
12 involved in that discussion. That is the job
13 of other folks in the firm.

14 Q. Mr. Callahan came to you with the
15 recommendation on behalf of either himself or
16 several other departments to terminate
17 Mr. Iacovacci's employment.

18 Did you and Mr. Callahan discuss the
19 question of whether or not you should give
20 Mr. Iacovacci any notice of the termination
21 that was being recommended prior to sending him
22 the October 14th letter?

23 A. If it wasn't expressly part of the
24 recommendation, then I would assume the
25 recommendation was accurate.

1 Monticciolo

2 Q. You just do what you are told; you
3 don't ask questions, right?

4 MR. SOLOMON: Object to the
5 question.

6 A. I don't do everybody's job in the
7 firm if that's what you're trying to insinuate.

8 Q. Whose job was it to ensure that
9 Mr. Iacovacci got notice of any alleged
10 material breaches of this agreement in your
11 view?

12 A. That's assuming that your question
13 is relevant and that decision is made by again,
14 I answered this question, Mark, guidance of
15 outside counsel, HR, compliance to make the
16 right recommendation that they feel is
17 appropriate.

18 Q. Did Brevet know at the time that
19 Mr. Iacovacci was doing business with
20 Mr. Robert Nokley?

21 A. At the time I do not know if it was
22 in one of those e-mails.

23 Q. I know you asked for a break for a
24 bathroom. Let's go off the record.

25 THE VIDEOGRAPHER: The time is

1 Monticciolo

2 1:05 p.m. We are going off the record.

3 (Lunch recess taken.)

4 AFTERNOON SESSION

5 THE VIDEOGRAPHER: It's 1:37 p.m.

6 and we are back on the record.

7 BY MR. CYRULNIK:

8 Q. Welcome back, Mr. Monticciolo. Did
9 Mr. Iacovacci attempt to execute any business
10 transactions using Brevet's trade secrets?

11 A. Yes.

12 Q. What business transactions did
13 Mr. Iacovacci attempt to execute using Brevet's
14 trade secrets?

15 A. From what we are aware of, the
16 [REDACTED], as we noted, activities
17 with the [REDACTED], the entering
18 into Non-Disclosure Agreements, our
19 Non-Disclosure Agreements with third parties
20 without bringing them in as part of Brevet when
21 he was here in '15 and '16.

22 We have using our trade secrets, our
23 processing, binding the firm to nondisclosures
24 without recording them as our materials and I
25 could go on through the list of the impact of

1 Monticciolo

2 trade secrets which anything leaving the firm
3 through a personal e-mail is the use of our
4 trade secrets because it takes them out of the
5 Brevet control environment.

6 Q. You'll certainly have your
7 opportunity to go through, I think the last
8 part of what you wanted to cover. Let me just
9 be specific on these questions and again I'll
10 remind you that I'm doing my best to try to get
11 through this important material methodically
12 and efficiently so I'm going to try to ask
13 targeted questions and none of those are to the
14 exclusion of asking other questions that you
15 may want to cover and of course Mr. Solomon
16 will allow you to cover more if he wants to as
17 well.

18 I want to focus on the business
19 transactions that Mr. Iacovacci attempted to
20 execute using Brevet's trade secrets. I heard
21 you mention the [REDACTED] and the
22 [REDACTED]. I want to
23 ask you some questions about those, but just
24 let me make sure.

25 Are there any other specific

1 Monticciolo

2 business transactions, transactions that
3 Mr. Iacovacci attempted to execute using
4 Brevet's trade secrets?

5 A. I believe it's related to [REDACTED]
6 [REDACTED], I forget its second name for a minute,
7 which is a related transaction. Obviously I
8 mentioned the [REDACTED]. There
9 was a company called [REDACTED]
10 [REDACTED]. That is
11 just a good example of a few that are
12 significant financial impact and damages to us.

13 Q. And I appreciate that. I don't want
14 examples. I want to have the complete list.
15 So I heard you mention now the [REDACTED]
16 [REDACTED] and you think that's associated
17 with [REDACTED]; is that what
18 you are thinking of?

19 A. Yes, correct.

20 Q. Let's call that one and I'll ask you
21 some questions about that. You mentioned the
22 [REDACTED] and I heard you mention
23 a third one, was it [REDACTED] Can you spell
24 that?

25 A. It's [REDACTED]

Monticciolo

Q. And that's a third business transaction that you contend Mr. Iacovacci attempted to execute using Brevet's trade secrets?

A. Those are the ones that are listed there. As I mentioned previously, there were -- trade secrets are included on Non-Disclosure Agreements which we previously produced under affidavits from Mr. Callahan on numerous times when our NDAs were being used by Mr. Iacovacci outside of his role as an employee or partner of Brevet.

Q. Are you referring to NDAs that Mr. Iacovacci entered into binding Brevet without authorization; is that what you are referring to?

A. Correct.

Q. But, you don't contend that those -- you may contend those are improper, but you don't contend that those are business transactions that Mr. Iacovacci was attempting to execute?

A. I am contending that those likely

Monticciolo

led into business transactions that I don't have in front of me here because I didn't think that was the goal here, but a substantial number of them would be materials being sent back and forth. Those were business transactions that did not come to Brevet that were lost opportunities.

Q. I'm not asking you about lost opportunities. Again, I would ask you politely to please focus on my question because there is a fair amount of subject matter.

There is lost opportunities. There is damages. There is business transactions Mr. Iacovacci attempted to execute. I'm going methodically over here, but in order to do that, I am going to need your help. If you can focus on my question, I want a complete list, sitting here right now as Brevet's corporate representative on the Topics 1 through 5, I want a list of the business transactions that Mr. Iacovacci attempted to execute using Brevet's trade secrets if any.

I heard you list so far

[REDACTED]

1 Monticciolo

2 [REDACTED]. Are there any other
3 business transactions that you can identify
4 sitting here now that Mr. Iacovacci attempted
5 to execute using Brevet's trade secrets?

6 MR. SOLOMON: I object to the
7 question and I object to your personal
8 definition.

9 Q. Thank you. Go ahead.

10 A. And attempted to execute, I would
11 reference then what has been produced at least
12 through affidavits and through the e-mails, all
13 those transactions where NDAs were executed and
14 no -- with Mr. Iacovacci and then directed to
15 his personal e-mail. There are too many to
16 just sit here and list off of memory, but they
17 were produced. They are in the affidavits.

18 Q. You don't need to use memory,
19 Mr. Monticciolo. If there is a list you want
20 to provide us, that's fine. I'm happy to go
21 through those if you have it in front of you,
22 but I want to know what business transactions
23 you contend Mr. Iacovacci attempted to execute
24 using Brevet's trade secrets.

25 A. I believe that that was already

1 Monticciolo
2 produced in Mr. Callahan's affidavit, at least
3 a subset of those.

4 Q. Mr. Monticciolo, I don't want
5 subsets. I don't want examples. This is a
6 30(b)(6) deposition. I want answers. I want
7 to know what business transactions
8 Mr. Iacovacci attempted to execute using
9 Brevet's trade secrets.

10 You can refer to whatever materials
11 you want to refer to as long as you tell me
12 what they are, but I want that list so I can
13 ask you about them.

14 A. So I believe off the top of my head
15 we then have to go to affidavit from
16 Mr. Callahan dated I believe it's the
17 January 17th one. So I'm going to do this off
18 the top of my head.

19 Q. Is it the 2018 affidavit because if
20 so, I'm happy to provide that to you. It's
21 Exhibit 12 in your folder.

22 A. No, it's not that one. There is a
23 defense's response as well from April, I
24 believe.

25 MR. CYRULNIK: Let me ask your

1 Monticciolo

2 counsel. Do you have the document that
3 Mr. Monticciolo is cross referencing for
4 me?

5 MR. SOLOMON: Just give me a minute.

6 MR. CYRULNIK: Let's go off the
7 record.

8 THE VIDEOGRAPHER: The time is
9 1:45 p.m. Going off the record.

10 (Brief recess taken.)

11 THE VIDEOGRAPHER: The time is
12 1:46 p.m. We are back on the record.

13 BY MR. CYRULNIK:

14 Q. We are back on. Mr. Monticciolo,
15 did you have an opportunity to locate the
16 document that you had in mind with the list of
17 business transactions that you attempted --
18 that Mr. Iacovacci attempted to execute using
19 Brevet's trade secrets?

20 A. Let's start with the defendant's
21 responses objected to by the plaintiffs dated
22 9/25/2018. I believe it's already number 6.

23 Q. Okay. 9/25/2018, number 6?

24 A. Yes.

25 Q. Do you have that in front of you?

1 Monticciolo

2 A. No.

3 MR. SOLOMON: I can put it in front
4 of him.

5 A. Are you going to post it?

6 Q. It's Exhibit 11. I think what you
7 are referring to is Exhibit 11. You'll tell me
8 if that's what you had in mind. Is that what
9 you are talking about, Mr. Monticciolo?

10 A. No, that's an affidavit.

11 MR. SOLOMON: So I put in front of
12 him the answer to interrogatory number 6
13 of the third set of interrogatories.

14 MR. CYRULNIK: Okay. If you would
15 like that to help you, Mr. Monticciolo,
16 can you tell me when you are ready to
17 respond to the question?

18 A. Sure. So you would like to go down
19 the list?

20 Q. I just want to get a list from you.
21 Let me be clear about the question. I want you
22 to tell me as Brevet's corporate
23 representative, 30(b)(6) representative at this
24 deposition, what business transactions
25 Mr. Iacovacci attempted to execute using

1 Monticciolo

2 Brevet's trade secrets?

3 A. Yes.

4 Q. Okay, go for it?

5 A. We can enumerate them or we can
6 reference the list on the document we just
7 referenced.

8 Q. The document you are referencing,
9 just to be clear for the record, is an
10 interrogatory response from Brevet dated what?

11 A. September 25, 2018. It's index
12 number 158735/2016. Is that helpful?

13 Q. Is this in the State Court or in the
14 Federal Court?

15 A. State Court.

16 MR. SOLOMON: State Court. I'm also
17 going to put in front of him the
18 supplemental responses and objections to
19 the first set of interrogatories in the
20 State Court.

21 Q. Well, let's go one by one, but okay.

22 MR. SOLOMON: That's number 23. Go
23 ahead.

24 MR. CYRULNIK: Do you have the
25 ability to put these on Exhibit Share,

1 Monticciolo

2 Lou?

3 MR. SOLOMON: If we do. If we
4 don't, we can't do it. We can't do it,
5 but we are going to e-mail it to you.

6 MR. CYRULNIK: Let's go off the
7 record just so we can get them and then we
8 will go back on.

9 MR. SOLOMON: Let's not go off the
10 record.

11 MR. CYRULNIK: I would like to go
12 off the record.

13 MR. SOLOMON: We are going to keep
14 our own time.

15 MR. CYRULNIK: Mr. Solomon is
16 objecting to going off the record because
17 apparently he wants to use the time it
18 takes for him to send the exhibit that the
19 witness was looking for and is now going
20 to reference to us.

21 We will just stay on the record and
22 we will note that of course this doesn't
23 count against our time for the 30(b)(6)
24 deposition, but if it makes Lou happy, we
25 can all do it while the videographer and

1 Monticciolo

2 court reporter are looking on.

3 We will tell you when we get the
4 e-mails.

5 MR. SOLOMON: We sent both
6 documents.

7 MR. CYRULNIK: Okay, I have the
8 documents in front of me. Take it away.

9 A. So the one from 9/25.

10 Q. I have that one up.

11 A. Page 8. The paragraph starting,
12 "Defendants also discovered that Plaintiff was
13 diverting business opportunities," that
14 paragraph.

15 Q. Let's take a look at the first
16 bullet point there. Can you describe to me the
17 business transaction that Mr. Iacovacci was
18 attempting to execute using Brevet's trade
19 secrets that is in your view referenced or
20 alluded to in the first bullet points on page 8
21 following the word "Defendants?"

22 A. I can't recall that exact one. As
23 you can tell, there are pages of these. This
24 has been produced as a Bates stamp, the
25 specifics of it, but we should go through each

1 Monticciolo

2 one of these under pulling up all the Bates
3 stamps if that is necessary.

4 Q. I don't want to do that,
5 Mr. Monticciolo. This is a 30(b)(6)
6 deposition. I would have thought that you
7 would be prepared to answer these questions.
8 Rather than cross referencing a list that I
9 don't understand, your job is to be prepared to
10 address these topics through testimony. You're
11 welcome to use, you know, interrogatory
12 responses if they will help you to respond to
13 those questions, but if they don't give you
14 sufficient information, then that's not
15 adequate preparation in our view for this topic
16 on the 30(b)(6) notice.

17 Let me just short circuit the
18 lengthy inquiry that would be necessitated.
19 I'm looking at a list of bullet points on page
20 8, 9, 10, 11, 12, 13 which appear to all be
21 referencing an e-mail, "Plaintiff's e-mail on"
22 with a date, et cetera and I believe every
23 single one of them starts with that, but I
24 can't make the representation with a hundred
25 percent certainty because I'm scrolling through

1 Monticciolo

2 this quickly, but do any of these bullet points
3 identify business transactions that you are
4 testifying Mr. Iacovacci attempted to execute
5 using Brevet's trade secrets?

6 A. Yes. This list very clearly of
7 which I think would be unreasonable to
8 memorize, hundreds of these as you just pointed
9 out, hundreds of pages, I know I can't remember
10 more than 11 cards in a deck of cards, so I
11 think it would be unreasonable to think I can
12 memorize every one of these, but I think it's
13 already been in this response shown that these
14 are discovered to be diverting business
15 opportunities of deal information of his
16 personal account and maybe as you say are
17 potential off market real estate opportunity,
18 documents related to a potential Brevet client,
19 an NDA for a potential Brevet client. These
20 are documents representing transactions that
21 are being diverted away from Brevet.

22 Q. I'll try this again,
23 Mr. Monticciolo. I'm not quite sure why this
24 is so challenging. I'm not talking about
25 diverting corporate opportunities right now.

1 Monticciolo

2 I'm asking you about business
3 transactions that Mr. Iacovacci attempted to
4 execute. Do you understand the difference?

5 MR. SOLOMON: I object to the
6 question.

7 A. No, I don't.

8 Q. If you don't understand the
9 difference, let me explain to you what I mean.
10 I don't want to know right now about potential
11 corporate opportunities that you think Brevet
12 had that Mr. Iacovacci diverted. I want to
13 know whether or not Brevet is contending that
14 Mr. Iacovacci attempted to execute a business
15 transaction using Brevet's trade secrets.

16 A. What I am very clearly saying is
17 that the actions denoted here are exactly the
18 attempt. It's the action that you use to do a
19 business transaction. Each one of these is an
20 action that you take to attempt to do a
21 business transaction.

22 Q. I'm asking you to identify the
23 business transaction, not the action you
24 undertake to do a business transaction. Not
25 some bullet point list of corporate

1 Monticciolo

2 opportunities.

3 I want to know what you can tell me,
4 as Brevet's corporate representative on these
5 topics, as to what business transaction
6 Mr. Iacovacci attempted to execute using
7 Brevet's trade secrets and if the answer is I
8 don't know, all I know is that he sent e-mails
9 to himself, then tell me that, but if you're
10 contending that there are business transactions
11 that you know of that Mr. Iacovacci attempted
12 to execute himself, I want to know what they
13 are.

14 A. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q. Which one are we talking about?

18 A. I think you can find it yourself on
19 the first page. It's unreasonable to be
20 prepared to look at every one of these e-mails.
21 I think it's unreasonable to think that
22 hundreds of these would be things that would be
23 specific. We've already done that. That is
24 what has been produced.

25 There are other ones. An

1 Monticciolo

2 [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED] I don't think these are
6 conjecturing or the way you make it sound.
7 These are business transactions that we looked
8 into previously and I did my homework which I
9 think was reasonable to confirm that this was a
10 list of business transactions that were
11 previously put together and sent under a
12 court's submission and to memorize them all I
13 think would be an unreasonable preparation for
14 this.

15 I don't have that kind of memory. I
16 don't think you do or anybody else does. You
17 wanted a few examples and I think I did that
18 already.

19 Q. Mr. Monticciolo, if you could please
20 focus on the question. I'm not asking you
21 about memorization. I told you now at least
22 two times, probably more, that you are welcome
23 to refer to whatever materials you want to
24 refer to as long as you identify what you are
25 referring to if you don't have a memory that

1 Monticciolo

2 can actually cover the material.

3 What I don't want you to do is cross
4 reference interrogatory responses that we found
5 to be completely deficient or unclear and try
6 and use those to get out of your obligations to
7 provide 30(b)(6) deposition testimony and so my
8 question to you is, is it your position that
9 every single one of the bullet points that you
10 just referenced, that is every bullet point on
11 page 8 beginning on the third bullet point from
12 the top of the page going all the way down to
13 the last bullet point on page 13 is an example
14 of a business transaction that Mr. Iacovacci
15 attempted to execute using Brevet's trade
16 secrets; yes or no?

17 A. Yes.

18 Q. What did you do to determine that
19 each of these was a -- an example of a business
20 transaction Mr. Iacovacci attempted to execute
21 using Brevet's trade secrets?

22 A. We looked at all of these e-mails.
23 If they contained any of our trade secret
24 materials which is noted on all of these, then
25 that would be the use of our trade secret

1 Monticciolo

2 materials.

3 Q. What did you do to determine that
4 each of these bullet points is a business
5 transaction that Mr. Iacovacci was attempting
6 to execute?

7 A. Again, I answered that question.

8 Q. I know that you feel that you did,
9 but obviously I feel that you didn't. So try
10 again.

11 A. I'll stand on my point. I answered
12 that question.

13 Q. What did you do to determine that
14 each of these bullet points identifies a
15 business transaction Mr. Iacovacci was
16 attempting to execute?

17 A. Are you asking a slightly different
18 question? I think I answered that as part of
19 my prior question.

20 Q. Mr. Monticciolo, rather than use
21 time to tell me whether you think you answered
22 a question, whether you didn't answer a
23 question, just answer the question, please.

24 A. I did answer the question. We
25 looked at the e-mails. We looked at the

1 Monticciolo

2 materials attached. If they are related to our
3 trade secrets, the action of the e-mail is an
4 attempt to do the business. That's why we
5 chose them.

6 Q. Mr. Monticciolo, is each of these
7 bullet points reflective of a different
8 business transaction Mr. Iacovacci attempted to
9 execute using Brevet's trade secrets in your
10 view?

11 A. I didn't look to see if they were
12 unique, but I believe they are.

13 Q. What is the basis for that belief?

14 A. Because my quick review of them
15 appears that they were unique.

16 Q. I'm having trouble understanding
17 what it is you are reviewing and what it is you
18 are referring to, so let's try this a different
19 way.

20 Can you tell me with respect to the
21 first bullet point on page 8 under the word
22 "Defendants", can you describe to me the
23 business transaction that you contend
24 Mr. Iacovacci was attempting to execute using
25 Brevet's trade secrets?

1 Monticciolo

2 A. Let's pull up Bates number 025010
3 again. I don't have the ability. I think it's
4 unreasonable to memorize every one of these.

5 Q. So you're unable to do that without
6 looking at the referenced document; is that
7 what you are telling me?

8 A. Yes. There are hundreds of them.
9 It is unreasonable that I can remember all of
10 these. The ones that stood out that have
11 damages that appear to be in the hundreds of
12 millions of dollars we provided as examples.
13 That we thought that was sufficient and
14 reasonable for this line of questioning.

15 Q. Look, we're don't need to debate the
16 efficiency or the relevance or any of those
17 things. I'm sure Mr. Solomon will have your
18 back when it comes time for the court to make
19 those decisions, Mr. Monticciolo.

20 Let me make sure I am understanding
21 one piece of what you just testified to. Is
22 page -- are the pages that we just talked about
23 in this interrogatory response only examples of
24 the business transactions that Mr. Iacovacci
25 attempted to execute using Brevet's trade

1 Monticciolo

2 secrets as an incomplete list; is that right?

3 MR. SOLOMON: So I object to the
4 question. We identified a couple of
5 different ones. You want to just put
6 those both together?

7 MR. CYRULNIK: You're talking about
8 the supplemental response, Mr. Solomon?

9 MR. SOLOMON: I am.

10 Q. You're welcome to -- I will include
11 the supplemental response in the question.
12 Between the September 25, 2018, pages 8 through
13 pages 13 list and the supplemental response
14 that Mr. Solomon just I think put in front of
15 you --

16 MR. CYRULNIK: What date is that
17 from, Lou?

18 MR. SOLOMON: Hold on.
19 September 29, 2007. Then to complete it
20 although I don't think -- I think it's
21 cumulative is the affidavit that we have
22 not sent you and will in opposition to the
23 Motion for Entry of Declaratory Judgment
24 and that is September 17, 2018. So if you
25 put all those together, you want to ask

1 Monticciolo

2 whether --

3 MR. CYRULNIK: I want to make sure I
4 got the dates there. I have a
5 September 24, 2018 interrogatory response
6 number 6 we have been talking about. Did
7 you say there was a supplemental response?
8 What was the date of that?

9 MR. SOLOMON: September 28, 2017.
10 It's a supplemental response. I can give
11 you the full name. Didn't we send this to
12 you?

13 MR. CYRULNIK: It's not a
14 supplemental response to this
15 interrogatory number 7.

16 MR. SOLOMON: It is not. It's
17 Supplemental Responses and Objections to
18 Plaintiff's First Set of Interrogatories.

19 MR. CYRULNIK: Which pages on that
20 one are you referencing?

21 MR. SOLOMON: 13 --

22 MR. CYRULNIK: That's a question for
23 Mr. Monticciolo. He doesn't need your
24 help on that.

25 A. I'm sorry, I missed that.

1 Monticciolo

2 Q. Which pages on the September 29,
3 2017 document that Mr. Solomon just provided
4 you are you referencing as a list of
5 transactions, business transactions
6 Mr. Iacovacci attempted to engage in using
7 Brevet's trade secrets?

8 A. Page 13 response to 23.

9 Q. Is it your testimony each of those
10 Bates numbers actually is a reference to a
11 business transaction in which Mr. Iacovacci
12 attempted to engage using Brevet's trade
13 secrets?

14 A. Yes.

15 Q. So I have a list in response to
16 interrogatory number 23 on the 9/29/17
17 responses to interrogatories. Then I have the
18 list on pages 8 through 13 that you identified
19 in the 9/25/18 responses to interrogatories and
20 what else did you want me to look at?

21 A. Page 15 answer the question 29, the
22 bottom of the response, the last part of it
23 subject to without waiver further goes into
24 clarification of what those documents were that
25 were attached to those e-mails.

1 Monticciolo

2 Q. I think your counsel is going to be
3 sending that one to us as well. Between those
4 three --

5 MR. SOLOMON: Wait. Stop, stop.

6 A. I got more.

7 MR. SOLOMON: Stop. He's now on the
8 same document you were just on. He just
9 gave you subsequent pages.

10 Q. What pages were you referring to on
11 the 9/29/17 response to 23?

12 A. What I'm referencing is on the
13 document page 16. It's a response to question
14 29 and it's the bottom half of the response,
15 starting with the word "Subject to and without
16 waiver."

17 Q. Are you looking at the response to
18 30 perhaps?

19 A. No, right above it and the response
20 to 30. The response to 30 --

21 Q. Let's slow down. Let's look at 29.
22 I'm on 29. I don't know -- what sentence are
23 you referring to?

24 A. Where like, approximately 10 up from
25 the bottom beginning with "Subject to."

1 Monticciolo

2 Q. "Subject to and without waiver of
3 the foregoing projections, Defendants identify
4 Brevet's sourcing network." Is that one?

5 A. Yes, right. This is the
6 clarification of what some of the attachments
7 were on the e-mails, but if you want to go and
8 just give Bates numbers of the e-mails, we can
9 just move on to question 30.

10 Q. I don't want to move on 30 while I'm
11 in the middle of 29. Is it your contention
12 that the response to number 29 identifying
13 Brevet's sourcing network and then there is a
14 bunch of other things which we will go through,
15 let's start with sourcing network. Is that a
16 business transaction in which Mr. Iacovacci was
17 attempting to engage?

18 A. No. Again, I was clarifying that
19 that could be helpful on those e-mails. We
20 could then -- so I retract that. To help
21 clarify let's go to question 30.

22 Q. Okay.

23 A. Our response, which is, I think,
24 maybe where you were already. Which is in the
25 middle of that response toward the bottom of

1 Monticciolo

2 page 16 is "Subject to and without waiver."

3 Q. Okay. Is it your contention that
4 each of the documents listed there by Bates
5 number identifies a different business
6 transaction in which Mr. Iacovacci attempted to
7 engage using Brevet's trade secrets?

8 A. Yes.

9 Q. So we got 23 and 30?

10 A. And we have 31 on the next page.

11 Q. Okay. Same thing. Every one of
12 those pages or series of pages Bates ranges
13 identifies different business transactions in
14 which Mr. Iacovacci was attempting to engage
15 using Brevet's trade secrets in your view,
16 right?

17 A. It seems like you know which ones
18 I'm talking about already. It's the ones
19 towards the bottom of the response of question
20 31 beginning with "Defendants further refer
21 Plaintiff ."

22 Q. Okay. Anything else?

23 A. Yes, so there is a third document
24 that was provided.

25 Q. Okay. Is this a document that is

1 Monticciolo

2 dated 1/17 of 2018? It's an affirmation from
3 Callahan?

4 A. Correct.

5 Q. Where are you looking there?

6 A. I am -- again this is a summary of
7 the results that we pull the specific e-mail.
8 It's a reference to some are specifically noted
9 here. On page 5, question 12 and so this
10 relates to the monthly transactions we
11 mentioned previously.

12 Q. That's number 12.

13 A. On question 13, which again
14 references e-mails to his personal Yahoo!
15 e-mail address.

16 Q. Okay. So that also identifies
17 business transaction in which transactions in
18 which Mr. Iacovacci was attempting to engage
19 using Brevet's trade secrets?

20 A. Yes, right in the middle there,
21 "Devin Scott of Stealth Power, a prospective
22 client for Brevet's EB-5 visa funding program."
23 So 14 outlines further e-mails of which are
24 Bates numbered here.

25 Q. What are the transactions, business

1 Monticciolo

2 transactions in which Mr. Iacovacci attempted
3 to engage as identified in 14 that you are
4 referring to?

5 A. Sure. So, I'll read this carefully.
6 So there aren't details in here while I'm
7 pulling additional information, so let's move
8 on to 15.

9 Q. Are you retracting 14?

10 A. Yes.

11 Q. Okay. You want me to look at 15
12 now?

13 A. Yes. We will look at that together.

14 Q. I would have preferred if you had
15 looked at these ahead of time, but I am happy
16 to sit here while you are doing it.

17 A. It's unfortunate I don't have an
18 infinite memory, so I did my best to be aware
19 as you pointed out hundreds of e-mails that I
20 was supposed to be immediately aware of. So in
21 here is noted the models being sent to Sproutt
22 Financial. It is mentioned here as
23 S-P-R-O-U-T-T Financial, which is provided
24 under exhibit on this agreement as has been
25 produced here.

1 Monticciolo

2 Q. So the Sproutt Financial, that is a
3 transaction, a business transaction in which
4 Mr. Iacovacci attempted to engage Brevet's
5 trade secrets in your view; is that right?

6 A. Yes, there are others listed on this
7 page. So a -- let me read this carefully.
8 I'll take 15 to be just capsulating that one,
9 just that one reference on paragraph 15.

10 Q. Sproutt Financial reference; is that
11 right?

12 A. Correct. There are exhibits that
13 give more detail, but I don't have them in
14 front of me.

15 Q. Let's take a look at the first
16 bullet point on the 9/25/18 list that you
17 started with. That's page 8. Can you and
18 we've put up as Exhibit 15 the Bates number
19 that you asked for Bates stamp 205010 and if
20 you can tell me after reviewing the document
21 that you asked for if you can describe for me
22 the business transaction in which Mr. Iacovacci
23 attempted to execute using Brevet's trade
24 secrets.

25 (Whereupon document was marked

1 Monticciolo

2 Exhibit 15 for identification as of this
3 date.)

4 MR. SOLOMON: I will object because
5 I think it goes beyond the scope of your
6 questions on the 30(b)(6) notice.

7 MR. CYRULNIK: I don't see how that
8 is possibly true, but okay, your objection
9 is noted for the record.

10 MR. SOLOMON: Well, it's possibly
11 true because I don't (inaudible).

12 Q. We posted as Exhibit 15 a document
13 you said you needed access to in order to
14 explain how the first bullet point on page 8 of
15 the 9/25/18 list that you identified is in fact
16 identifying a business transaction that
17 Mr. Iacovacci attempted to execute using
18 Brevet's trade secrets.

19 A. Well, he's sending to himself
20 material information about one of the most
21 proprietary programs of Brevet, Brevet
22 information about these transactions, specific
23 company names and specific information about
24 these transactions which --

25 Q. Go ahead?

1 Monticciolo

2 A. Which is, you know, it's the essence
3 of Brevet. This is a backbone business of
4 Brevet.

5 Q. I think we are talking past each
6 other. Mr. Monticciolo, I want you to explain
7 to me the nature of the business transaction
8 that Mr. Iacovacci attempted to execute using
9 Brevet's trade secrets. I don't want you to
10 talk to me about how important the trade
11 secrets are on this question or backbones of
12 Brevet.

13 I want you to explain to me what was
14 the business transaction that Mr. Iacovacci
15 attempted to execute. You referenced this
16 bullet point. I provided you with all the
17 information you asked for.

18 MR. SOLOMON: Note my continuing
19 objection. It goes beyond the scope of
20 the 30(b)(6) notice.

21 A. The business transaction is to
22 utilize our documents, our policies, customer
23 names and participants we used, potentially
24 with third parties for himself.

25 Q. Potentially with third parties. Is

1 Monticciolo

2 it your position that Mr. Iacovacci attempted
3 to execute a business transaction potentially
4 with third parties, potentially without third
5 parties?

6 MR. SOLOMON: Same objection. It
7 goes beyond the scope.

8 A. It's not my place to conjecture. I
9 could find no other reason why somebody would
10 send this to their personal directory or home
11 outside of Brevet with one of the most critical
12 parts of the firm.

13 Q. Let's talk basic details.

14 Mr. Monticciolo, who is the third-party?

15 A. The third-party is this transaction

16 [REDACTED]

17 Q. I'm sorry?

18 A. [REDACTED]

19 Q. [REDACTED]

20 A. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Q. Well, I don't want to know who is
25 mentioned. I'm trying to understand the

1 Monticciolo
2 transaction. Let's start with [REDACTED]. What
3 was the nature of the transaction that
4 Mr. Iacovacci attempted to execute with
5 [REDACTED] ?

6 A. He was attempting to do a financing
7 similar to what we do with R&D, which is
8 probably why he needs these documents, but this
9 is conjecture because it doesn't say
10 specifically on here, but this is confidential
11 information and transactions and borrowers that
12 we did execute business with regarding this.

13 Q. I don't want conjecture. I want
14 answers. You're a corporate representative
15 here. Your job is not to sit here
16 conjecturing. I want to know whether or not
17 your position is that Mr. Iacovacci did, in
18 fact, attempt to execute business transactions
19 with [REDACTED] using Brevet trade secrets or
20 whether you think that Mr. Iacovacci might have
21 attempted to execute a business transaction
22 with [REDACTED] using Brevet's trade secrets?

23 MR. SOLOMON: I object to the
24 question going beyond the scope of the
25 30(b)(6) notice.

1 Monticciolo

2 A. I can't answer that from the
3 definition of reviewed. I would see no other
4 reason why this would be taken outside of
5 Brevet.

6 Q. You could appreciate that I can't
7 rely on whether the fact that you can't see any
8 other purpose is going to convince anybody that
9 this is actually an example of a business
10 transaction that Mr. Iacovacci attempted to
11 execute. You understand that, right?

12 A. I understand that this is
13 misappropriation of our trade secrets of the
14 essence of Brevet.

15 Q. If I asked you questions about
16 misappropriation of trade secrets in particular
17 that would have been an appropriate response.
18 What I have been asking you about for the last
19 25 or 30 minutes is for you to identify the
20 business transactions that Mr. Iacovacci
21 attempted to execute using Brevet's trade
22 secrets, not the trade secrets themselves, and
23 instead I have gotten cross references to
24 lengthy lists that appear to be different from
25 business transactions.

1 Monticciolo

2 That's why I am presenting you with
3 just the first one, the very first one, Mr.
4 Monticciolo, you pointed me to. You said you
5 couldn't answer my question when I showed you
6 the bullet point that you referenced. You
7 needed the document. I gave you the underlying
8 document and now I'm asking you the question
9 again.

10 So for a clear cut question, the
11 question is: Sitting here right now as
12 Brevet's corporate representative, do you know
13 one way or the other whether or not
14 Mr. Iacovacci was attempting to execute a
15 business transaction in the document that is
16 referenced here currently marked as Doug
17 Monticciolo Exhibit 15?

18 MR. SOLOMON: Object to the
19 question. It goes beyond the scope of the
20 30(b)(6) notice.

21 A. I'm not taking conjecture, but if
22 you want to because it would be a long answer,
23 we can chose others on this list. The one I
24 pointed out as the first one I pointed out
25 which goes to potential market real estate

1 Monticciolo

2 opportunity.

3 Q. Mr. Monticciolo, you're spinning.
4 I'm asking you a question. Do you know one way
5 or the other with respect to the first bullet
6 point that you identified and the underlying
7 document that I provided you with at your
8 request, whether or not, yes or no, do you know
9 whether or not Mr. Iacovacci was attempting to
10 execute a business transaction using Brevet's
11 trade secrets from this document?

12 MR. SOLOMON: I want a continuing
13 objection.

14 MR. CYRULNIK: Lou, a standing
15 objection on follow-up questions regarding
16 the same topic is all you need. I get it.
17 You made your objection. Please let try
18 to keep this moving.

19 Q. Go ahead, Mr. Monticciolo.

20 A. I can't determine from this one
21 document. I would have to look further.

22 Q. So you don't know, sitting here
23 right now, whether this, in fact, is an example
24 of a business transaction Mr. Iacovacci
25 attempted to execute using Brevet's trade

1 Monticciolo

2 secrets, right?

3 A. I gave my answer. That wasn't my
4 answer.

5 Q. You do know or you don't know; yes
6 or no?

7 A. I said I would have to look further.

8 Q. Because you haven't looked further,
9 you don't know, sitting here today, whether
10 this is an example of a business transaction
11 Mr. Iacovacci attempted to execute using
12 Brevet's trade secrets, right?

13 A. It's one of the hundreds I pointed
14 out, right.

15 Q. First one, exactly. In fact, the
16 lists that you pointed me to, Mr. Monticciolo,
17 those are lists of e-mails that Mr. Iacovacci
18 sent not of business transactions per se that
19 he was engaging in, right?

20 A. No, that's not. These are attempts
21 to do business.

22 Q. How do you know that?

23 A. Sending an NDA is the first step in
24 attempting to do business, in your definition.
25 In my definition, attempting to do business

1 Monticciolo

2 starts with sending an NDA. So there is just
3 that list of those that we can point out.

4 Q. Right now I'm focusing on the ones
5 you pointed to initially. Do you want to
6 retract your testimony that pages 8 through 13
7 of the 9/25/18 interrogatory response? Each
8 one of those bullets identifies a business
9 transaction in which Mr. Iacovacci attempted to
10 engage using Brevet's trade secrets or do you
11 want to stick by that testimony?

12 A. I want to stick by that testimony.

13 Q. You're going to stick by that
14 testimony?

15 A. Yes, sir.

16 Q. All right. Let's take a look at the
17 second bullet point. You reference an e-mail
18 October 7, 2015. Do you see that?

19 A. On page 8?

20 Q. Yes. We are still on page 8, page 8
21 of the 9/25/18 interrogatory responses, the
22 list there, second bullet point. Can you tell
23 me what business transaction Mr. Iacovacci
24 attempted to execute using Brevet's trade
25 secrets as described in the second bullet point

1 Monticciolo

2 on page 8 under the words "Defendants?"

3 MR. SOLOMON: I object to the
4 question as beyond the scope of the
5 30(b)(6) notice and I'll continue to
6 object on that basis for any question on
7 this second one.

8 A. My response is the same as before.
9 If you want, let's pull up the Bates number and
10 look at the documents that were received for a
11 potential Brevet filing.

12 Q. Before looking at the document
13 sitting here today, do you know one way or the
14 other whether, in fact, the second bullet point
15 we are looking at reflects a business
16 transaction in which Mr. Iacovacci attempted to
17 engage using Brevet's trade secrets?

18 A. And I answered this question before.
19 I cannot be expected -- it's beyond reasonable
20 to have knowledge of every one of these e-mails
21 back five years.

22 Q. I am sure the court will have its
23 view on reasonableness. That's fine. I just
24 want to have a clear answer to my question. Do
25 you know sitting here today?

1 Monticciolo

2 A. Sitting here today what?

3 Q. Whether or not the second bullet
4 point on page 8 here under the word
5 "Defendants" identifies a business transaction
6 that Mr. Iacovacci attempted to execute using
7 Brevet's trade secrets?

8 A. Given that this list is already
9 selected to be that and it says "Attaching
10 documents received from a potential Brevet
11 client," I would say it more likely than not
12 does. It's conjecture. We can pull the Bates
13 and look at it.

14 Q. Go for it. Exhibit 16 all yours.
15 (Whereupon document was marked
16 Exhibit 16 for identification as of this
17 date.)

18 Q. I pulled for you the reference Bates
19 number, Mr. Monticciolo, and you're welcome to
20 use this to help conform your answer.

21 Sitting here today, do you know one
22 way or the other whether the second bullet
23 point on page 8 identifies a business
24 transaction which Mr. Iacovacci attempted to
25 engage using Brevet's confidential trade

1 Monticciolo

2 secrets?

3 A. Give me a second. And your question
4 again?

5 Q. Sitting here today as Brevet's
6 corporate representative, do you know one way
7 or the other whether the second bullet point on
8 page 8 identifies a business transaction which
9 Mr. Iacovacci attempted to execute using
10 Brevet's trade secrets?

11 A. It looks like he was attempting to
12 utilize this business outside of Brevet.

13 Q. Again, I know you have testimony
14 that you want to give on trade secrets and
15 taking it and misappropriation and all that.
16 I'm asking you a specific question.

17 Is there a business transaction
18 Mr. Iacovacci attempted to execute using
19 Brevet's trade secrets that is identified in
20 the second bullet point on page 8 or in the
21 e-mail that you asked me to pull up?

22 A. It appears that there was a business
23 opportunity that he was attempting to pursue
24 because there would be no other reason to
25 forward these materials outside of Brevet.

1 Monticciolo

2 Q. Can you describe to me the business
3 transaction Mr. Iacovacci was attempting to
4 execute? Who was the counterparty?

5 A. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. So tell me about the business
16 transaction Mr. Iacovacci was attempting to
17 execute using Brevet's trade secrets? Who were
18 the counterparties? [REDACTED] and
19 Mr. Iacovacci; is that the deal?

20 A. It would be, and this is just
21 conjecturing from these materials.

22 Q. I don't want you to conjecture. I
23 want you to tell me what you know.

24 A. What I know I don't recall the
25 details of this, of the one several hundred,

1 Monticciolo

2 but the document seems to stand on its own.

3 Q. When you say you don't recall, is it
4 your testimony that you once knew the nature of
5 the business transaction, but you no longer
6 recall it or that you never knew whether there
7 was a business transaction that Mr. Iacovacci
8 was attempting to execute here using Brevet's
9 trade secrets?

10 A. I don't recall. This has been six
11 years.

12 Q. You don't know one way or the other;
13 is that right?

14 A. My response stands.

15 Q. The last time you identified a list
16 of trade secrets that Brevet contends
17 Mr. Iacovacci appropriated; do you recall that?

18 A. I'm sorry, say the question again.

19 Q. At the last deposition in October,
20 you provided a lengthy list of trade secrets
21 that Brevet contends Mr. Iacovacci
22 appropriated. Do you recall that?

23 A. Yes.

24 Q. Do you have anything to add or
25 subtract to the list you provided at the

1 Monticciolo

2 deposition?

3 A. I do.

4 Q. Okay. Let's start with
5 subtractions. Anything you want to take off
6 the list?

7 A. No.

8 Q. Let's go to additions. You want to
9 add things to the list of what I think were 32
10 different trade secrets that you referenced; is
11 that right?

12 A. I think you pointed out 26, but I
13 haven't counted them.

14 Q. Maybe my team did a better job. I'm
15 sorry, you're right, 26.

16 A. So to be clear, our offering
17 materials, our memoranda, so our offering
18 materials are important. Our limited
19 partnership agreements, our subscription
20 agreements, our asset structures, the legal
21 opinions related to those asset structures, all
22 alternative investment vehicles and any related
23 opinions. Our board compositions and our board
24 types, our accounting policies and their use
25 and our tax opinions and tax structure.

1 Monticciolo

2 Those are things that I think should
3 be explicitly stated because those are
4 important to the trade secrets of Brevet.

5 Q. How did you get this list of
6 supplemental items?

7 A. It's from protecting my business.

8 Q. No, how did you come up with this
9 list of supplemental items between the October
10 deposition and today's deposition?

11 A. I just thought more. I went back
12 and looked at the lists of everything that had
13 been provided in detail and I wanted to make
14 sure that these documents were clearly denoted.
15 I did it myself.

16 Q. You did it yourself?

17 A. I did it myself.

18 Q. Did you speak with counsel about it?

19 A. No.

20 Q. You identified tax opinions last
21 time, right?

22 A. I don't recall. I may have. I
23 wanted to be clear that these additions -- I'm
24 sorry if they were duplicative.

25 Q. No problem. Are these additional

1 Monticciolo

2 categories or categories you listed today, the
3 categories that are supposed to go on the list
4 of 26 trade secret categories with damages or a
5 list of six categories without damages?

6 A. These are definitely with damages.

7 Q. Let's start with all of our investor
8 lists. Do you recall identifying that as a
9 trade secret?

10 A. Yes.

11 Q. Please describe this purported trade
12 secret?

13 A. Investor lists are one of the most
14 confidential proprietary items protected under
15 regulatory rules as well. This goes under who
16 Brevet's investors are.

17 Q. Where is this list located? Is it
18 one list or is it a series of lists? What are
19 we talking about?

20 A. There are lists maintained for each
21 of the investment vehicles.

22 Q. So each investment vehicle has its
23 own list of investors?

24 A. Yes.

25 Q. Where is each investor list

1 Monticciolo

2 maintained? Where is it located?

3 A. It's maintained by the third-party
4 administrator.

5 Q. Who is that?

6 A. [REDACTED]
7 [REDACTED]

8 Q. Each of the investment vehicles
9 houses its investor list with [REDACTED]?

10 A. Correct.

11 Q. And how does a Brevet employee go
12 about accessing that investor list?

13 A. You would have to be in compliance
14 or in a need to know request situation to get
15 that access to that list.

16 Q. Where is that, the need to know
17 request access list, maintained?

18 A. It is maintained again at [REDACTED].
19 That's the formal books and records. I believe
20 there is a shadow copy kept by compliance, but
21 the master list, the definitive list is
22 maintained by the administrator.

23 Q. Where is the list that you are
24 referring to or the lists that you are
25 referring to? Where are they located in the

1 Monticciolo

2 parties' document production or other discovery
3 responses in this litigation?

4 A. I would have to go back and look
5 through all these e-mails, but there were
6 e-mails with specific investor name -- the
7 contact information provided.

8 Q. Was the list that you were referring
9 to misappropriated or are you talking about the
10 misappropriation of individualized contact
11 information for certain investors?

12 A. The list informs -- I don't believe
13 it was the complete list, but maybe Paul's
14 rendition of it and the contact information for
15 those investors.

16 Q. I didn't understand your answer.
17 Say that again, please, the first part.

18 A. It was a list that may have been put
19 together by Paul and the contact information
20 separately.

21 Q. You said a list that was put
22 together by Paul? I'm not following. Who puts
23 together the investor list that you are
24 identifying as trade secrets and that you say
25 were housed with [REDACTED] ?

1 Monticciolo

2 A. So, it's put together and maintained
3 there. I do not know if Paul accessed a
4 version of it as a partner or had access. That
5 would probably not be easily traceable.

6 Q. You don't know whether Paul was on
7 the list of need to know people for the
8 investor lists that were housed at [REDACTED]?

9 A. Correct.

10 Q. Okay. Do you know whether Paul ever
11 reviewed those investor lists that were housed
12 at [REDACTED]?

13 A. I don't know.

14 Q. Is it fair to say that you don't
15 have any reason -- withdrawn.

16 Is it fair to say that you don't
17 know whether Paul took those investor lists
18 from [REDACTED] or from the shadow copy housed with
19 compliance and kept it for himself, do you?

20 A. That would be conjecture by the way.

21 Q. To what extent is this trade secret
22 known within Brevet?

23 A. Which trade secret are you talking
24 about?

25 Q. The investor lists.

1 Monticciolo

2 A. No one. It's limited.

3 Q. Can you elaborate on that, to what
4 extent is it known?

5 A. I answered the question already.
6 It's a need to know.

7 Q. How many people have access to the
8 investor lists?

9 A. You would have to ask compliance to
10 give the exact number at any exact point in
11 time.

12 Q. Give me a rough estimate.

13 A. Two or three.

14 Q. Two or three people had access to
15 the investor list and you don't know whether
16 Paul Iacovacci was one of them?

17 A. Correct.

18 Q. Do you have any -- were you one of
19 those two or three people?

20 A. No, I'm on a need to know, no.

21 Q. You said you are on the need to
22 know?

23 A. If I need to see it, I can get
24 access, but I'm not one of the people that
25 holds that access.

1 Monticciolo

2 Q. So you're saying two or three people
3 have regular access and then a bunch of other
4 people would be able to access it if they say
5 they need to; is that right?

6 MR. SOLOMON: Object to the
7 question.

8 A. I didn't say that. Your
9 characterization of say they need to would not
10 be a proper representation of the process.

11 Q. What would be a proper
12 representation of the process for the need to
13 know people?

14 A. They would have to justify a need to
15 know, not just say they want it.

16 Q. I see. They have to justify a need
17 to know to whom?

18 A. To compliance.

19 Q. You don't have any evidence that
20 Paul actually -- withdrawn.

21 What has Brevet done to quantify the
22 value of this purported trade secret investor
23 list?

24 A. Obviously investors are critical
25 part of Brevet. So knowledge of who our

1 Monticciolo

2 investors are, if someone wanted to disrupt or
3 tried to convince our investors to leave, the
4 value could easily be looked at as being the
5 entire value of Brevet.

6 Q. Right, but if -- did you quantify
7 the value of the actual list?

8 A. Again, I would say it's the value of
9 Brevet.

10 Q. The entire value of Brevet is housed
11 within this investor list?

12 A. It's the source of all of our
13 revenue. It's not just the sole source of
14 value.

15 Q. What did Mr. Iacovacci do to
16 misappropriate this purported trade secret?

17 A. Took it outside of Brevet's domain.

18 Q. I guess I'm not following. I
19 thought you testified a few moments ago that
20 you don't know whether he took it outside of
21 the Brevet domain or whether he even accessed
22 it. Did I get that right?

23 A. No, I said I would have to look at
24 the e-mails to see where he did copy it because
25 I do recall in my review of the affidavits and

1 Monticciolo

2 responses.

3 Again, I can't point to specifically
4 which one that mentioned that those were --
5 that the investor list and investors were
6 specifically identified as the e-mail by Paul.

7 Q. Mr. Monticciolo, you're the 30(b)(6)
8 corporate representative of Brevet here to
9 testify on Topics 1 through 5.

10 Can you identify whether
11 Mr. Iacovacci misappropriated the investor
12 lists that you just described; yes or no?

13 A. As I sit here without reviewing the
14 hundreds of e-mails, I cannot point to the
15 specific one, but I can testify that he did in
16 part or in whole. I cannot answer that right
17 now as I sit here.

18 Q. When did he misappropriate the
19 investor list?

20 A. Again, we are going back on this
21 question of going to have to look through the
22 hundreds of e-mails to identify which one was
23 which date.

24 Q. You're saying there are multiple
25 investor lists that he misappropriated; you

1 Monticciolo

2 just don't know which dates he misappropriated
3 which lists?

4 A. I clarified and said in part or in
5 whole. Whether he sent individual investor
6 information or lists, I would have to go back
7 and look at the e-mails.

8 Q. Did Paul deal with the investors,
9 the Brevet investors?

10 A. At one point in his career early in.

11 Q. How early?

12 A. Early. My recollection is much
13 before the 2015 timeframe.

14 Q. But in the 2014, 2015, 2016 time
15 period Paul wasn't dealing with investors,
16 right?

17 A. I would have to go back and check
18 those specific dates to be accurate.

19 Q. If Mr. -- well, withdrawn.

20 If somebody e-mails to himself an
21 electronic business card of a single investor,
22 would that count as misappropriating the
23 investor list in your view?

24 A. I am not in the position to make
25 that judgment. That is why lawyers are here.

1 Monticciolo

2 It depends what is in that information.

3 Q. I appreciate the fact that you
4 delegated that to your lawyers. I'm trying to
5 understand your testimony. You told me that
6 you do know that Mr. Iacovacci misappropriated
7 in whole or in part investor lists to some
8 extent and I'm trying to understand what you
9 have in mind. Is Mr. Iacovacci forwarding to
10 himself a business card that had contact
11 information for an investor or whether you have
12 something else in mind? Is my question clear?

13 A. Our investors are confidential. Any
14 of that information leaving the firm is
15 confidential information leaving the firm.

16 Q. So is the answer to my question yes
17 if Mr. Iacovacci e-mailed himself a business
18 card that had the contact information for one
19 of Brevet's many investors, you would
20 understand that to be an example of
21 Mr. Iacovacci misappropriating the investor
22 lists in part that you were referring to as a
23 Brevet trade secret; is that right?

24 A. Again there is many -- the reason
25 what was sent home in that card, but again our

1 Monticciolo

2 investor list is confidential and so, yes.

3 Q. What harm or damages resulted from
4 Mr. Iacovacci's e-mailing himself one or more
5 electronic business cards that had contact
6 information for one or more of Brevet's
7 investors, if any?

8 A. If any, contacting those investors
9 in trying to divert business away from us or
10 attract them to the [REDACTED],
11 [REDACTED] others.

12 Q. I'll ask my question again. What
13 harm or damages, if any, resulted from
14 Mr. Iacovacci's e-mailing himself a business
15 card containing contact information from one or
16 more investors?

17 A. The harm is that some investors did
18 not invest with us.

19 Q. Which investors -- I'm sorry, I
20 didn't mean to cut you off. I thought you were
21 done.

22 A. I just mentioned them. I mentioned
23 the two off of the top of my head.

24 Q. I heard [REDACTED]
25 [REDACTED] Let's go through each of those.

1 Monticciolo

2 Let's start with the [REDACTED].

3 It's your contention that the reason
4 [REDACTED] did not invest with you, Brevet, is
5 because Mr. Iacovacci misappropriated the
6 contact information for the [REDACTED]
7 [REDACTED] is that -- did I summarize that
8 correctly?

9 A. No, I think you just conflated those
10 two. Can you ask your question again?

11 Q. If I did, I didn't mean to. Is it
12 your testimony that the [REDACTED]
13 did not invest with Brevet because
14 Mr. Iacovacci had misappropriated its contact
15 information?

16 A. It's our belief and our sales
17 force's belief that the [REDACTED]
18 acted in a way as if they were no longer
19 pursuing us in light of the possibility to
20 pursue Mr. Iacovacci and there are others.

21 Q. Let's just go one by one because
22 otherwise it is going to get wieldy. So on
23 [REDACTED], when did you first
24 reach out to [REDACTED]?

25 A. I have to go back and check the call

1 Monticciolo

2 logs, but we have been talking to them for a
3 very long time.

4 Q. What does that mean?

5 A. Pretty confidently before the
6 2015/16 time period.

7 Q. When did you stop talking to them?

8 A. I don't think we ever stopped
9 talking to them per se, but the ability to then
10 pursue investing with us from conversations
11 with our sales team ended on or about the time
12 period that Paul was reaching out to them.

13 Q. Which was when?

14 A. I'd have to go back and look at
15 those call logs.

16 Q. Well, can you give me your best
17 recollection as a 30(b)(6) witness here?

18 A. Over the last couple of years. It
19 doesn't happen like in a single phone call.

20 Q. What is it that you draw as the
21 causal link between Mr. Iacovacci taking
22 contact information from the [REDACTED]

23 [REDACTED] and the fact that the [REDACTED]
24 [REDACTED] refused to invest with Brevet?

25 A. So this is trade secrets right and

1 Monticciolo

2 there are others like I mentioned which is a
3 concern of people that they could -- someone
4 has access to our trade secrets which is a
5 backbone, the essence of differentiation as a
6 manager. So who knows what Paul will be doing
7 or saying to do that.

8 Q. Did [REDACTED] tell you
9 we are not investing with you because
10 Mr. Iacovacci had access to your investor list
11 and so we don't think that you guys are
12 properly maintaining your investor lists as
13 trade secrets?

14 A. That isn't what I said.

15 Q. I'm trying to understand then what
16 is it that you viewed Mr. Iacovacci as the
17 reason for --

18 A. One second. Sorry, would you repeat
19 your question?

20 Q. Yes. The question was what is
21 the -- how did Mr. Iacovacci taking -- let me
22 actually take one step back. When did
23 Mr. Iacovacci take the [REDACTED]
24 [REDACTED] misappropriated [REDACTED]
25 [REDACTED] contact information?

1 Monticciolo

2 A. I would have to go back and look at
3 that. That is -- there is a lot of contacts
4 that were sent to the e-mail.

5 Q. Do you know sitting here today
6 whether he took the [REDACTED]
7 contact information from Brevet?

8 A. Yes.

9 Q. You do. Can you get that on his
10 own? No chance he got the [REDACTED]
11 [REDACTED] contact information on his own?

12 A. Given that we were talking to them
13 when he was at the firm?

14 Q. Given whatever you like to. Is
15 there any chance Mr. Iacovacci got [REDACTED]
16 [REDACTED] contact information on his own?

17 A. In getting the details, I would say
18 unlikely.

19 Q. Getting what details?

20 A. Phone numbers, e-mail addresses.

21 Q. You say unlikely, but you really
22 don't know sitting here one way or the other
23 for certain whether or not Mr. Iacovacci got
24 those details from Brevet or from his own
25 research, right?

1 Monticciolo

2 A. I'm saying that we know that he had
3 it when he was here. I don't know what the
4 difference would be if he took it or, you know,
5 and e-mailed it, wrote it down.

6 Q. Well, let me make sure I understand.
7 Mr. Iacovacci had the [REDACTED]
8 contact information while he was working for
9 Brevet and then three, four, five years later
10 he reached out to the [REDACTED]
11 using some other source for the phone number
12 that he would reach out to or the e-mail he
13 would send an e-mail to.

14 Is it your view that Mr. Iacovacci
15 misappropriated a trade secret in the form of
16 Brevet's investor lists?

17 A. If that is the only thing he did, it
18 would have to be very fact and circumstanced
19 based as to the details around that. I would
20 have to see it myself.

21 Q. Fair enough. So without knowing --
22 sitting here today, without knowing the details
23 of when and how Mr. Iacovacci reached out to
24 the [REDACTED] post his employment
25 with Brevet, you would agree with me that he

1 Monticciolo

2 misappropriated [REDACTED]
3 contact information with Brevet; is that fair?

4 A. No, I believe that we know that he
5 did send his contact information from the
6 [REDACTED] contact information
7 to his personal e-mail address. I don't know
8 if we can confirm it.

9 Q. When you say you have to confirm it,
10 you are sitting here today as a 30(b)(6)
11 witness. Are you for certain that
12 Mr. Iacovacci got the [REDACTED]
13 information from Brevet or is it possible he
14 got it on his own?

15 A. I think it's unreasonable to ask me
16 to look at the as noted thousand contacts that
17 were e-mailed and memorize every one. I did
18 give you some examples of transactions and
19 other specifics that there is clear cut
20 communication, but I am not going to sit here
21 and say I remember the exact e-mail date.

22 Q. Mr. Monticciolo, in all fairness, I
23 think this was the first example. So I'm just
24 asking you about the first one you mentioned.

25 I'm asking you with respect to the

1 Monticciolo

2 [REDACTED], do you know for
3 certain, yes or no, that Mr. Iacovacci
4 misappropriated [REDACTED]
5 contact information from Brevet?

6 A. I know that my team has told me that
7 he has. Do I have the specific e-mail in front
8 of me? No. There are other firms, [REDACTED]

9 [REDACTED]

10 Q. We are going one by one here.

11 MR. SOLOMON: We are going one by
12 one although even given the few extra
13 minutes, I would like the court reporter
14 to let us know when we are at four hours
15 for the day.

16 Q. Who on your team told you for
17 certain that Mr. Iacovacci misappropriated
18 [REDACTED] contact information?

19 A. Our salespeople.

20 Q. Who?

21 A. Chris Hurd.

22 Q. Chris Hurd. When did he tell you
23 that?

24 A. He said that -- I don't remember the
25 exact details, but I remember a conversation

1 Monticciolo

2 back during that time during that period that,
3 you know, that was a concern that came up that
4 run a bell as a contact that had been sent to
5 Paul's old e-mail and I remember Chris Hurd
6 responding a concern on that because we were
7 talking to him.

8 Q. Is it your view that [REDACTED]
9 [REDACTED] phone number or e-mail address
10 constitutes a trade secret?

11 MR. SOLOMON: Asked and answered.

12 A. I answered that. It's very fact and
13 circumstance. What else was there?

14 Q. I don't think you answered that, and
15 if you did, my apologies for missing it. I
16 don't think I asked it, so if you answered it,
17 it would have been an anticipatory answer which
18 is possible because there have been a few of
19 those, but I want to know whether it is your
20 view whether [REDACTED] phone
21 number or e-mail address constitutes a trade
22 secret.

23 A. Well, no, if you generalize it to be
24 the [REDACTED] no.

25 Q. How about the individual or

1 Monticciolo
2 individuals at the [REDACTED] that
3 Mr. Iacovacci contacted, are those contact
4 information, e-mail addresses or phone numbers
5 for those individuals in your view trade
6 secrets?

7 A. Again, the trade secrets involves
8 that information plus the fact that we were
9 talking to them and the details of that
10 conversation. So if you want to limit it to
11 just that, I can't tell.

12 THE VIDEOGRAPHER: You're already at
13 four hours.

14 MR. SOLOMON: If you want to go
15 another five minutes, please do.
16 Otherwise, we are going to conclude.

17 MR. CYRULNIK: To be clear, I'm
18 going through the trade secrets that your
19 client identified and I'm asking him
20 questions about them.

21 It's taking an extraordinarily long
22 time because I ask yes and no questions
23 and I never get yes or no answers or
24 almost never get them and I get answers to
25 other questions.

1 Monticciolo

2 MR. SOLOMON: I disagree about this.
3 I think you spent an hour on something he
4 couldn't possibly prepare for. It wasn't
5 even in the subject matters of your
6 30(b)(6) notices. And you spent an hour
7 on it so, of course, he is going to give
8 you I don't knows.

9 MR. CYRULNIK: He didn't give me I
10 don't knows. The problem is he gave me
11 lengthy answers to other questions.

12 MR. SOLOMON: Tell me one place
13 where you asked for actual specific
14 business transactions and you didn't.

15 MR. CYRULNIK: We got to go one at a
16 time. This is also not a good use of
17 time. I'm sure you're counting it against
18 my time on the record as you give your
19 soliloquy.

20 MR. SOLOMON: That's why we are
21 going an extra five minutes because I want
22 to be even more than fair. Listen, we
23 have a difference of opinion on this. We
24 haven't even started Ms. da Silva Vint.
25 We think this is your tenth deposition and

1 Monticciolo

2 you can't expand and expand and expand by
3 asking 39 or however many categories you
4 asked for in your 30(b)(6) notice. Take
5 five minutes if you want to finish up,
6 please, otherwise --

7 MR. CYRULNIK: We are in the middle
8 of a deposition. If you're going to pull
9 the witness in the middle of his going
10 through his list of trade secrets, that is
11 for you to do and we will deal with the
12 consequences, but I'm trying to go through
13 his list.

14 Q. So yes or no, do you know whether or
15 not Mr. Iacovacci misappropriated a
16 confidential phone number or confidential
17 e-mail address or confidential information
18 before the [REDACTED] ?

19 A. I know that he e-mailed contact
20 information which may have included just those
21 limited items or more to himself.

22 Q. You just don't know one way or the
23 other sitting here whether it included anything
24 beyond that?

25 A. Correct.

1 Monticciolo

2 Q. If I went onto the [REDACTED]
3 [REDACTED] website or the internet, would I be
4 able to find the phone number and e-mail
5 address for the individual or individuals that
6 Mr. Iacovacci reached out to at the [REDACTED]
7 [REDACTED] ?

8 A. I don't think that would be easy to
9 do.

10 Q. Why not?

11 A. Because they don't want everybody
12 under the sun calling them.

13 Q. Apart from believing that they don't
14 want everybody under the sun calling them, is
15 there any other basis for you contending that I
16 could not get [REDACTED] contact
17 information, e-mail address or phone number for
18 the individuals that Mr. Iacovacci reached out
19 to on my own using the internet and some
20 resourceful phone calling to their main
21 numbers?

22 A. I think it's substantially more
23 difficult than just commonly try to find
24 somebody using those techniques for a reason as
25 I mentioned.

1 Monticciolo

2 Q. Do you know one way or another
3 whether I would be able to get those contact
4 information details, whether it's a phone
5 number, an e-mail address or both for one or
6 more of the individuals Mr. Iacovacci reached
7 out to on my own without ever having worked for
8 Brevet or accessing their investor list; yes or
9 no?

10 A. I didn't think I needed to prepare
11 for this to go and do web searches to find that
12 information. I haven't done it myself.

13 Q. How about the -- let's go with the
14 methods you used to create competitive barriers
15 in your investment strategy. Can you identify
16 for me where those methods are located or
17 housed in the Brevet information systems?

18 A. That's extensive. That's the
19 essence of the firm. Yes, they are in our
20 policies and procedures and our loan documents,
21 in our fund structures of the items I
22 enumerated a while ago. What we do is unique.
23 So there is not -- there are not competitors
24 doing what we do. It is all of them trade
25 secrets that I mentioned.

1 Monticciolo

2 MR. SOLOMON: We need to go off the
3 record just for a second, Jason. The
4 witness can stay.

5 MR. CYRULNIK: I'm sorry, what was
6 that?

7 MR. SOLOMON: I need to go off
8 record for a second. The witness can stay
9 right there.

10 THE VIDEOGRAPHER: The time is
11 3:01 p.m. We are going off the record.

12 (Brief recess taken.)

13 THE VIDEOGRAPHER: The time is
14 3:06 p.m. We are back on the record.

15 MR. CYRULNIK: Before the break you
16 were telling us about, you were
17 answering -- Mr. Solomon had to get up in
18 the middle. I think he is back. I know
19 he wants to say something on the record
20 with respect to ending this deposition in
21 our view prematurely.

22 We will do that if that's what he
23 wants to, but I would like to return to
24 the category of trade secrets you
25 identified if he will allow me to do so

1 Monticciolo

2 and ask you how vacation policies
3 constitute trade secrets in your view.

4 MR. SOLOMON: Mr. Cyrulnik, thank
5 you. Because I think improperly you asked
6 the question when I told you that we were
7 going to be closing the deposition and
8 seeking some guidance from the court. I'm
9 going to let the witness answer the
10 question and then I would like to
11 reiterate that before the deposition
12 began, we counted the number of hours that
13 you had for 30(b)(6) witnesses and you
14 needed three hours left and that's all you
15 had.

16 We have gone now over an hour beyond
17 the three hours and we think that is all
18 the rules entitled you to. So we are
19 going to finish this because you have
20 asked the question. I'll let the witness
21 answer that question and then we are going
22 to be in our view shutting the deposition
23 down. Go ahead.

24 BY MR. CYRULNIK:

25 Q. Let's start with the answer to my

1 Monticciolo

2 question. We can talk about the rest of that
3 in a minute. Mr. Monticciolo?

4 A. So you used the word vacation
5 policies. I believe I said holidays. And
6 holidays matter because we are what is called
7 an open-ended fund. Open-ended fund has notice
8 periods. Notice periods are how many days
9 before you have to send the notice before we
10 have to do things and how many days we have to
11 respond.

12 One of the unique things about
13 Brevet and any trade secret of Brevet is how do
14 we calculate those because they are not
15 calculated the way the industry norm is. They
16 are calculated using a cumulative global set.

17 I don't want to give all our trade
18 secrets on it, but the net result is we get a
19 very big advantage and have historically for
20 the fact that we count holidays differently,
21 which gives you a simple synopsis. If it is
22 something where someone has to tell us 90 days
23 in advance, there may only be 60 days that they
24 can actually do that, which is tremendously
25 valuable to the type of fund that we run and

1 Monticciolo

2 how much time we have in a similar fashion to
3 actually respond to that.

4 These are material advantages of
5 which we know no one else who takes the
6 position that we do and have always taken it.

7 MR. SOLOMON: We feel that we are
8 done. You've gone beyond your time. You
9 don't have any time left and we believe
10 that this deposition and the 30(b)(6)
11 notice is now satisfied and the deposition
12 is concluded.

13 MR. CYRULNIK: So obviously I'm --
14 first of all, I want to understand the
15 witness' last answer and follow up on that
16 but before I do, I will respond to
17 Mr. Solomon's statement on the record.

18 Obviously we believe that are in the
19 middle of a 30(b)(6) deposition. We have
20 accommodated this witness and several
21 other witnesses left and right in terms of
22 their own schedules. We weren't able to
23 complete the 30(b)(6) deposition testimony
24 October 7th with this witness and on a
25 prior October date I believe it was with a

Monticciolo

different witness. In fact, we have allowed Brevet to designate different witnesses to cover those topics for this follow-up day of deposition.

Ms. da Silva Vint is supposed to be going on certain topics instead of Mr. Callahan for unidentified reasons, but we accepted that. Mr. Monticciolo is supposed to be covering on some of the ones he was designated on. We believe we have time to complete those depositions.

Mr. Solomon has again, I don't want to characterize it in a way that he is going to take offense to, but I believe he is threatening to pull the witness in the middle and I take it from his statement that he is threatening not putting Ms. da Silva Vint up for her topics, which is remarkable as well.

We are prepared to continue to complete these depositions today with the designated witnesses that Brevet has identified to cover the remaining topics of the 30(b)(6) which we think are

1 Monticciolo

2 important.

3 We are also prepared to reach out to
4 the court to the extent Mr. Solomon wants
5 to stand on whatever contrary view he has
6 to seek the court's guidance rather than
7 to cut a deposition short by having the
8 witness walk out in the middle and having
9 the other witness who is scheduled to be
10 deposed who I believe is in the room with
11 Mr. Solomon not go on camera.

12 So I would invite Mr. Solomon to
13 either allow us to complete the
14 deposition, particularly given the amount
15 of leeway we have given this witness in
16 terms of the types of answers we have
17 gotten to some straightforward questions
18 and the fact that we have many hours
19 remaining under the rules.

20 We are at a minimum if he feels he
21 is not prepared to do that without
22 guidance from the court reach out jointly
23 with the court right now so that we can
24 get the court's guidance to complete these
25 depositions today.

1 Monticciolo

2 MR. SOLOMON: Thank you very much.

3 MR. CYRULNIK: We are not off the
4 record. We are not going off the record.
5 If you want to walk out in the middle of
6 the deposition.

7 MR. SOLOMON: Forgive me. From my
8 perspective we are off the record. Thank
9 you very much.

10 MR. CYRULNIK: I don't know what
11 that means.

12 Q. But Mr. Monticciolo --

13 MR. CYRULNIK: Well, do you want to
14 reach out to the court with me then,
15 Mr. Solomon?

16 MR. SOLOMON: I'm not able to do it
17 now. It's not appropriate to do it now,
18 but we will certainly be willing to do
19 that. Thank you.

20 MR. CYRULNIK: Mr. Solomon, I'm able
21 to reach out to the court right now if
22 you're unable to do that now.

23 MR. SOLOMON: Jason, I'm not able to
24 do it now nor do I think it's appropriate
25 to do it now. You keep promising us that

1 Monticciolo

2 you are going to send us cases. You
3 haven't.

4 MR. CYRULNIK: Mr. Solomon, no one
5 has promised to send you cases. That is
6 not what happened at all. I'm happy to
7 tell you what the case law says. If you
8 didn't do the research ahead of time,
9 you're not prepared to explain to the
10 court why you're pulling a witness in the
11 middle of the deposition, that's your
12 problem. But I'm prepared to call the
13 court if you insist on reaching out to the
14 court.

15 I'm prepared to continue these
16 depositions and finish them today and
17 there are at least several hours of
18 depositions that are scheduled, so I don't
19 know what conflict you have with reaching
20 out to the court now.

21 I will note for the record that
22 Mr. Solomon and Mr. Monticciolo have
23 turned off their cameras. I believe on
24 camera they stood up and were starting to
25 walk out in the middle of the deposition.

1 Monticciolo

2 My best guess is that they've
3 completed that exercise and that they are
4 no longer here. We think that's wholly
5 improper and we're intend to raise that
6 with the court and unfortunately there is
7 nothing more we can do.

8 We are not in the same room with the
9 witness. Even if we were, there would be
10 very little we could do apart from
11 reaching out to the court, which we would
12 like to do. And so we will have to do
13 that and complete this deposition whenever
14 the court orders the witness to show back
15 up and we will obviously ask for the
16 appropriate costs associated with having
17 to engage in that exercise.

18 I'll give Mr. Solomon and the
19 witness another minute to come back. We
20 have given Mr. Solomon and the witness
21 time to return. It's now 3:15 p.m. and
22 they still haven't returned. So I don't
23 think we can reach out to the court ex
24 parte.

25 I think the proper thing to do would

Monticciolo

be to reach out to the court at this point after the deposition and we will obviously provide the court with the appropriate transcript and video if necessary of Mr. Monticciolo leaving the deposition in the middle of the 30(b)(6) questioning on Topics 1 through 5.

I will also make a record because I believe we were going to continue this deposition transcript and recording with the remainder of the topics being covered by Ms. da Silva Vint.

I will separately confirm, but it seems like she is being pulled from today's deposition slate and not going to sit down and appear to address those topics which is quite unfortunate as well.

So I guess I'll let the court reporter and the videographer off the hook at this point. Just to make clear, we are sitting here roughly five minutes after the witness walked off of the deposition. No sign of either the witness or his counsel. No sign of the next witness who

1 Monticciolo

2 is supposed to be deposed as well and a
3 refusal by opposing counsel to reach out
4 to the court together with us to get
5 whatever guidance is needed to ensure that
6 these depositions get completed today.

7 And so let me just note for the
8 record the topics that have not been
9 completed, and then we will close it up I
10 suppose unless they show back up.

11 Just in terms of the topics, I want
12 to make sure this is clear.

13 Mr. Monticciolo was designated on
14 Topics 1 through 5 and 26 for today. He
15 has covered 26, which was the first half
16 of the deposition. We transitioned to 1
17 through 5 and we are in the middle of
18 those. He has listed roughly 32
19 categories of purported trade secrets and
20 then purported to add more today to that
21 list.

22 We went through I believe one and a
23 half of them and then he got up in the
24 middle of the deposition. So we have 1
25 through 5 remaining trade secrets

Monticciolo

categories that need to be covered for Ms. da Silva Vint. Again, just for the record and I'll see whether we need to make this record on another transcript, but Ms. da Silva Vint was designated on Topics 6 through 8, 10 through 14, 27 through 31 and 36 through 38 and we haven't gotten to those today. So those are the open topics from the 30(b)(6) deposition notice that is Exhibit 3 to this deposition. I believe it's Exhibit 3. And I'm sorry, it's Exhibit 10 to this deposition. And we will deal with that at the appropriate time with the court.

Thanks to the court reporter and to the videographer for their time and if you can stay on after we go off the record, let me know whether you think there is another court reporter or videographer to take the nonappearance of Ms. da Silva Vint that will be appreciated.

THE VIDEOGRAPHER: The time is 3:18 p.m. going off the record.

(Time noted: 3:18 p.m.)

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A C K N O W L E D G M E N T

STATE OF :
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COUNTY OF :

I, DOUGLAS MONTICCILOLO, hereby certify
that I have read the transcript of my testimony
taken under oath in my deposition on the 1st
day of November, 2021; that the transcript is a
true, complete record of my testimony and that
the answers on the record as given by me are
true and correct.

DOUGLAS MONTICCILOLO

Signed and subscribed to before
me this day of
, 2021.

Notary Public of the State of

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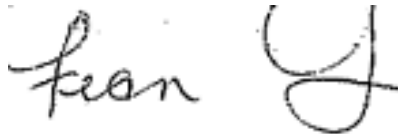
C E R T I F I C A T E

I, FRAN INSLEY, hereby certify that the Deposition of DOUGLAS MONTICCILOLO was held before me on the 1st day of November, 2021; that said witness was duly sworn before the commencement of testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Deposition of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of November, 2021.

A handwritten signature in cursive script, appearing to read "Fran Insley", is written in dark ink.

FRAN INSLEY

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VERITEXT LEGAL SOLUTIONS

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NAME OF CASE: IACOVACCI v. BREVET

DATE OF DEPOSITION: November 1, 2021

4

NAME OF DEPONENT: DOUGLAS MONTICCILO

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SUBSCRIBED AND SWORN TO BEFORE ME

THIS ___ DAY OF _____, 20__.

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(NOTARY PUBLIC) MY COMMISSION EXPIRES:

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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